

G9LVROD1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x
3 UNITED STATES OF AMERICA

4 v.

15 CR 756 (PAC)

5 MICHAEL EARL RODRIGUEZ,

6 Defendant.

JURY TRIAL

-----x

7 New York, N.Y.
8 September 21, 2016
9 9:50 a.m.

10 Before:

11 HON. PAUL A. CROTTY,
12 District Judge

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 AMANDA L. HOULE

JORDAN L. ESTES

16 TIMOTHY T. HOWARD

Assistant United States Attorneys

17 GOLDSTEIN & HANDWERKER LLP

18 Attorney for Defendant Rodriguez

MICHAEL HANDWERKER

19 -Also Present-

20 RICHARD DEMURJIAN, Special Agent (DEA)

21 SYLVIA LEE, Paralegal (SDNY USAO)

22 YOLANDA BUSTILLO, Paralegal (SDNY USAO)

G9LVROD1

Summation - Ms. Estes

(Trial resumed; jury not present)

THE COURT: Is everybody set?

MS. ESTES: Yes, your Honor.

THE COURT: Mr. Handwerker?

MR. HANDWERKER: Yes, your Honor.

THE COURT: Okay. Marlon.

(Jury present)

THE COURT: Ms. Estes, are you ready?

MS. ESTES: Yes, your Honor.

THE COURT: Go ahead.

MS. ESTES: The defendant is a drug dealer who had a gun, a gun that he bought from two other drug dealers, a gun that provided protection to his marijuana growing operation.

Ladies and gentlemen, this is straightforward.

The defendant is guilty.

Over the past two days, you've heard and saw all of the evidence that shows that the defendant, Michael Rodriguez, conspired to distribute and possess with the intent to distribute marijuana; that he possessed a gun in furtherance of that marijuana conspiracy.

You know that from the defendant's statements at the U.S. Attorney's Office, where he admitted that he sold high-quality marijuana and that he bought a gun from two drug dealers. You know that from the evidence connecting him to the grow-house, to the management company documents where he's

G9LVROD1

Summation - Ms. Estes

1 listed as a resident of that apartment, from the cell site
2 evidence, and the testimony of the security guard, Jermel
3 Teague, putting him in the area of the grow-house regularly,
4 from the postal money orders that connect him to payments to
5 the grow-house. You know that from the fact that he had a
6 U-Haul storage unit in his name where grow-house supplies were
7 kept. And you know that from the defendant's prison calls and
8 email where he said again and again that he had a gun.

9 That's just a sample of the evidence you've heard over
10 the past two days. This summation is my chance to pull it all
11 together and to show you how it points to one inescapable
12 conclusion: The defendant is guilty as charged.

13 Now, you've heard Judge Crotty say that it's your job
14 to find the facts. But as you can see, there are a number of
15 facts that are not in dispute; that is, the government and the
16 defense agree on them. And I'm going to start by going over
17 what's not seriously disputed.

18 First, it is not seriously disputed that on March
19 30th, 2016, the defendant and his attorney attended a meeting
20 at the U.S. Attorney's Office. Also present was Investigator
21 Antoinette Guzman and an Assistant United States Attorney.
22 During that meeting, the defendant admitted that he sold
23 high-quality marijuana. He said that he had regular customers
24 and that his batches sell quickly. He also admitted that he
25 bought a gun from two childhood friends, two friends that he

G9LVROD1

Summation - Ms. Estes

1 gave marijuana to to sell, so his co-conspirators. One of them
2 also sold crack cocaine. He got a gun from those two drug
3 dealers.

4 He also admitted that he kept the gun in his apartment
5 where he kept a stash of marijuana. And he admitted that on
6 the day he was arrested, which you know from other testimony
7 was August 21st, 2015, he took the gun and the marijuana out of
8 the apartment in a bag together.

9 What else is not seriously in dispute? Apartment 909
10 at 420 East 111th Street was a marijuana growing operation.
11 You can see it here in Government Exhibit 111. This is the
12 main grow room.

13 MR. HANDWERKER: Judge, I just want to make clear, I'm
14 not acquiescing to anything.

15 THE COURT: If that's an objection, Mr. Handwerker,
16 it's overruled.

17 MS. ESTES: Now, Apartment 909 was in a large
18 residential building with hundreds of residents with families.
19 In the middle of that building on the ninth floor there's a
20 marijuana growing operation. You can see the building here in
21 Government Exhibit 131.

22 Now, every room in that building was dedicated to the
23 marijuana growing operation. You can see the kitchen here in
24 Government Exhibit 121. There's tubing going from the kitchen
25 sink to the main grow room. And Government Exhibit 127 on the

G9LVROD1

Summation - Ms. Estes

1 right, you can see the bathroom where there are buckets and
2 there's tubing that also goes to the main grow room; it's for
3 irrigation. On the bottom left, you see a bucket of trimmings,
4 the product of this marijuana growing operation.

5 There was a carbon dioxide generator in that
6 apartment. You can see it here in Government Exhibit 118; it
7 had an open flame. It connected to the kitchen by a tube you
8 see there in Government Exhibit 120. That's where the stove
9 should have been, but there was no stove, there were no beds,
10 there was no furniture in the apartment.

11 There's no dispute that the defendant's sister,
12 Nanette Rodriguez, was caught red-handed in that apartment on
13 the day the search warrant was carried out. She was trimming
14 buds off a marijuana plant. You can see her there in
15 Government Exhibit 129. On the left, Government Exhibit 114,
16 you see the marijuana plants again and the heat lamps.

17 There's no dispute that Ivan Puello was caught outside
18 the apartment the day the search warrant was executed. And
19 there is no dispute that the defendant's name is on documents
20 from the management company related to that apartment. Here is
21 just one example in Government Exhibit 1107: Name, Michael
22 Rodriguez; home, 420 East 111th Street, Apartment 909.

23 There is also no real dispute that there was a storage
24 unit, Unit 2324, at U-Haul in the Bronx that was leased in
25 Michael Rodriguez's name. You can see the storage rental

G9LVROD1

Summation - Ms. Estes

1 agreement in Government Exhibit 500 at the top. Customer name:
2 Michael E. Rodriguez. You can also see his home phone number
3 listed there, 917-407-8320.

4 The bottom of the page you see a late notice for that
5 U-Haul storage unit. It's going to Michael E. Rodriguez, and
6 it's dated August 2015. So he's still leasing that same
7 storage unit in August 2015.

8 What was found in the unit? Supplies consistent with
9 a grow-house. You can see these here. Government Exhibit 407,
10 you see a carbon dioxide generator. Government Exhibit 409, a
11 lamp timer. And you see the outside of the storage unit there
12 on the left.

13 There's also no real dispute that the defendant
14 possessed a gun. As we discussed, he said this in his meeting
15 at the U.S. Attorney's Office, and he's also said it again and
16 again in prison calls and emails.

17 For instance, let's look at Government Exhibit 901, an
18 email from September 9th, 2015. Quote: "I got caught with
19 less than a half pound of weed and an unloaded small calibur
20 (sic) handgun."

21 So he got caught with a gun and drugs together. He
22 admits that in this email.

23 Next, September 19, 2015, this was a prison call.
24 Quote: "And there's a lot of people in here with guns that
25 don't get bail. But they not putting up property. They are

G9LVROD1

Summation - Ms. Estes

1 not -- you know, they had -- their guns had bullets in it ready
2 to go. Mine was in a bag, no bullets, no anything."

3 August 31st, 2016, this was just a few weeks ago,
4 here's another prison call: "Because they're saying, cause I
5 had spoke to the DA, right? Told her why I was carrying the
6 gun, gave her the whole story with Kacey and everything and who
7 gave me the gun and all that stuff."

8 So in this call, he's confirming everything that you
9 heard from Investigator Antoinette Guzman. He's confirming
10 that he told the U.S. Attorney's Office why he was carrying the
11 gun and who gave him the gun. And as you've heard, two drug
12 dealers gave him that gun.

13 Ladies and gentlemen, all of these facts are not
14 seriously disputed.

15 So what is in dispute? Two things:

16 One, the defendant's involvement with the grow-house
17 in Apartment 909; and two, that the defendant possessed the gun
18 in furtherance of the marijuana conspiracy and carried the gun
19 during and in relation to a drug trafficking crime.

20 So first I'm going to explain to you why the evidence
21 shows that the defendant was involved in a marijuana conspiracy
22 that included this grow-house. Then I'm going to explain why
23 the defendant's undisputed possession of the gun was in
24 furtherance of the marijuana conspiracy.

25 Now, as to the marijuana conspiracy, I expect that

G9LVROD1

Summation - Ms. Estes

1 Judge Crotty will tell you that the government has to prove two
2 elements: First, that there was an agreement to distribute or
3 possess with the intent to distribute marijuana; and second,
4 that the defendant knowingly and intentionally became a member
5 of that conspiracy.

6 Now, before I talk about the grow-house, I want to
7 remind you, you don't have to find that the defendant was
8 connected to that grow-house to find that he is guilty of a
9 marijuana conspiracy. You know he is guilty of a marijuana
10 conspiracy because he said so in his meeting at the U.S.
11 Attorney's Office.

12 MR. HANDWERKER: Judge, I object to what they know.
13 If she wants to say --

14 THE COURT: It's argument, Mr. Handwerker.

15 The objection is overruled.

16 MR. HANDWERKER: It's got to be based upon evidence.

17 THE COURT: It is based on evidence. It's argument
18 based on evidence.

19 The objection is overruled.

20 MS. ESTES: In his meeting at the U.S. Attorney's
21 Office, he said he was a high-quality marijuana dealer. He
22 said he gave his marijuana to two of his childhood friends who
23 dealt that marijuana. Ladies and gentlemen, that is a
24 marijuana conspiracy right there. Without anything else, you
25 can convict him on Count One. End of story.

G9LVROD1

Summation - Ms. Estes

1 But there's so much more.

2 How else do you know that the defendant was involved
3 in a conspiracy to distribute marijuana? You know that because
4 of the multitude of ways the defendant is connected to the
5 grow-house in Apartment 909.

6 There are the documents from the management company
7 where he's listed as a resident of that apartment. There's the
8 testimony of security guard Jermel Teague, who saw him in the
9 area of that apartment building one or two times a week.
10 There's the cell site evidence putting him in the area of that
11 apartment on a regular basis. There's the fact that he had a
12 U-Haul storage unit leased in his name that contained
13 grow-house supplies. There's the fact that two of his
14 associates were found at the grow-house the day the search
15 warrant was executed. There are text messages with his
16 associate Ivan Puello where he refers to "on the ninth," the
17 ninth floor, Apartment 909, that apartment. And there are the
18 postal money orders where he is connected to payments made on
19 that apartment.

20 So let's talk about these connections.

21 First, the management company documents.

22 Now, as shown in the stipulation, the person listed as
23 the head of household for that apartment, Ramon Cartagena, was
24 required to submit an annual income affidavit listing the
25 residents of the apartment. He had to do that from 2007 to

G9LVROD1

Summation - Ms. Estes

1 2012.

2 Now, in the first few years, as you can see on the
3 screen here, Government Exhibits 1100, 1101, and 1102, Ramon
4 Cartagena is listed as living in the apartment, along with his
5 son, also named Ramon Cartagena. But in 2010, Michael
6 Rodriguez was added as a resident of Apartment 909. That's
7 shown here in Government Exhibit 1103. He is listed as a
8 cousin. He is listed again in Government Exhibit 1104. You
9 can see it here on the screen. This time he's listed as a
10 friend.

11 As explained in the stipulation, to be added as a
12 resident, you need to submit a lot of paperwork. So Michael
13 Rodriguez submitted a birth certificate, a driver's license, a
14 Social Security card, and income tax returns. You can see all
15 of those on the screen here in Government Exhibit 1107. He
16 also had to pay a fee for a criminal background check and
17 credit check. You can see that Rodriguez paid that fee on the
18 screen here in the money order from Government Exhibit 1107.
19 He also signed documents authorizing the background check, also
20 shown on the screen here.

21 Now, Rodriguez's name was no longer listed as a
22 resident in 2012. Your common sense tells you why. This
23 apartment was being used as a grow-house and he didn't want to
24 get caught. But you know he was still involved in that
25 apartment in 2015 from the other evidence.

G9LVROD1

Summation - Ms. Estes

1 You have the testimony of the security guard, Jermel
2 Teague. Teague identified Rodriguez in court as somebody that
3 he saw around the apartment complex frequently. He said he'd
4 seen him there since he began working there, so that covers
5 2015. You also have the cell site evidence, putting the
6 defendant in the area of that apartment multiple times a week,
7 and that's completely consistent with Mr. Teague's testimony.

8 So as to the cell site, there's no real dispute that
9 that number is the defendant's phone number. It's subscribed
10 in his name and it's the number he gave the U-Haul facility.

11 There is also no real dispute where the defendant
12 lived. He lived on the West Side, 175 West 95th Street, same
13 building as sometimes called 733 Amsterdam Avenue. You saw
14 that his cell phone frequently hit cell towers in that area,
15 which makes sense because that's where he lives.

16 But what other cell sites is he connecting to
17 regularly? Cell sites near the grow-house. You can see that
18 here in Government Exhibit 703I. That's what Investigator
19 Donaldson told you. In particular, he told you that most
20 frequently he connects to Cell Site 271, the cell site a block
21 and-a-half from the grow-house. That's the closest of these
22 three cell sites to the grow-house.

23 The cell site evidence shows that the defendant was in
24 that area multiple times a week. You can see that on the
25 calendar here, Government Exhibit 703J. All of those red

G9LVROD1

Summation - Ms. Estes

1 circles, those are the dates he's in the area of the
2 grow-house. Again, that lines up with Mr. Teague's testimony.

3 You also heard from Investigator Donaldson that he's
4 connecting to cell sites near the U-Haul storage facility where
5 you saw grow-house equipment. You can see the cell sites here
6 in Government Exhibit 703K.

7 Now, as to the cell site on the left in particular,
8 Investigator Donaldson testified that he's connecting to two
9 sectors there: The one facing south and the one facing east.
10 And he explained that that's probably because he's somewhere on
11 the border of those two sectors. So he's somewhere along that
12 red line pointing southeast. As you can see on this map,
13 what's near that red line pointing southeast? The U-Haul
14 storage unit.

15 Again, turning back to the calendar, he's going to
16 that unit on a regular basis; you can see it on the days
17 circled here.

18 Now, ladies and gentlemen, that is not a coincidence.
19 The defendant lives on the far West Side; the grow-house is on
20 the far East Side, and the U-Haul is up in the Bronx. There is
21 a reason he is connecting to those cell sites on a regular
22 basis. You know he's connected to those locations from the
23 documents. And the cell site evidence tells you he's going
24 there. That's the simplest explanation.

25 Now, how else do we know the defendant is connected to

G9LVROD1

Summation - Ms. Estes

1 the grow-house? By the contents of the storage unit leased in
2 his name. As you heard from Special Agent Demurjian, DEA
3 agents carried out a search warrant on that storage unit. When
4 they did that, they found supplies consistent with the
5 grow-house. There was a carbon dioxide generator, fans, tubing
6 for air-conditioners. So let's look at some of those supplies.

7 You can see here on the screen the carbon dioxide
8 generator found in the storage unit. That's Government Exhibit
9 407 on the left. On the right, you can see the carbon dioxide
10 generator found in the grow-house. You can see they are
11 virtually identical.

12 Next. On the left you have a lamp timer found in the
13 storage unit from Green Air Products. On the right you have
14 the carbon dioxide generator again, Green Air Products. The
15 lamp on the left was found in the storage unit; the generator
16 on the right found in the grow-house.

17 And you have the air-conditioning parts. On the left,
18 there's tubing found in the storage unit in Government Exhibit
19 410. On the right, the same tubing in use in the grow-house,
20 Government Exhibit 116. And again, there's a reason for these
21 similarities; that was Rodriguez's storage unit, and this is
22 his grow-house.

23 Now, as defense counsel has noted, Michael Rodriguez
24 was not found in the grow-house the day of the search. But two
25 of his co-conspirators were, one inside and one right outside.

G9LVROD1

Summation - Ms. Estes

1 Nanette Rodriguez and Ivan Puello. So you know they are
2 associated with the grow-house. And the evidence shows that
3 they are his co-conspirators.

4 Let's look back at the call frequency analysis that
5 Investigator Donaldson testified about. You can see an excerpt
6 of it here, Government Exhibit 703F.

7 The defendant had over 1200 calls over a six-month
8 period with the phone recovered from the grow-house. And you
9 know that is Nanette Rodriguez's phone; she was the one found
10 in the grow-house on the day the search warrant was carried
11 out.

12 Also, Ivan Puello's phone, the phone he had on him,
13 the phone agents took from him the day the search warrant was
14 carried out, the defendant had 273 calls over that six-month
15 period with that phone. So he's calling that phone multiple
16 times a day.

17 You also heard the prison call, Government Exhibit
18 903, where the defendant warns the other person on the call
19 about saying "Ivan" or his sister's name. I'd like to play
20 that call again for you right now.

21 (Audiotape played)

22 MS. ESTES: Now, on that call you heard the defendant
23 tell the other person on the call not to repeat "Ivan" again;
24 not to say his sister's name. You know he's referring to Ivan
25 Puello and Nanette Rodriguez. You know he's worried about the

G9LVROD1

Summation - Ms. Estes

1 mention of his co-conspirators on that call. He doesn't want
2 their names on this recorded call. He doesn't want to get
3 caught or be associated with them.

4 You also know they are his co-conspirators because of
5 their connections to the U-Haul storage unit. You heard the
6 testimony that Ivan Puello, shown in this surveillance footage
7 in Government Exhibit 400, was at the storage facility. You
8 also heard the testimony of George Parker, that the defendant's
9 sister, Nanette Rodriguez, called about the storage unit after
10 he was arrested. She wanted to clear out the unit and get rid
11 of the incriminating evidence. She wanted to help her brother.

12 So the three of them, the defendant, Ivan Puello, and
13 Nanette Rodriguez, they are all involved in this marijuana
14 conspiracy.

15 Now, let's talk about the text messages between the
16 defendant and Ivan Puello. The defendant was careful on the
17 phone. He doesn't refer to marijuana in text messages and he
18 doesn't refer to 420 East 111th Street. Instead, he and Puello
19 talk in coded language.

20 Let's look at the one on the top here, dated October
21 6th, 2014. This is Government Exhibit 710. The text was sent
22 at 7:47 a.m. from the phone subscribed to Michael Rodriguez to
23 the Ivan Puello phone. It says, "9 a.m., ninth."

24 Next. May 18, 2015. This is Government Exhibit 711.
25 7:22 a.m. It's from the Michael Rodriguez phone to the Ivan

G9LVROD1

Summation - Ms. Estes

1 Puello phone. "9:15 the ninth" is what it says.

2 And here's a third one. August 20th, 2015, from
3 Michael Rodriguez to the Ivan Puello phone at 7:41 a.m. He
4 says, "On the ninth."

5 Now, ladies and gentlemen, it's not hard to practice
6 code. When he says "on the ninth," what is he referring to?
7 The grow-house, Apartment 909, the ninth floor. When he is
8 sending these text messages, he's telling Ivan Puello when he's
9 going to be at the grow-house apartment. And you know this
10 from the cell site data.

11 Now, we don't have the data for the 2014 texts because
12 it doesn't go back that far, so let's turn to the ones from
13 2015.

14 Now, on May 18th, the defendant texted Puello "9:15
15 the ninth." And the next day, at 9:15, where was he? In the
16 area of the grow-house, that's what Investigator Donaldson
17 testified. You can see that here on the screen in Government
18 Exhibit 703M. From 9:12 to 9:14, he makes multiple calls that
19 connect to the cell tower you see there, the cell tower a block
20 and-a-half from the grow-house. And who does he call around
21 9:15? His co-conspirators. He makes one call to the Ivan
22 Puello phone and one call to the phone recovered from the
23 grow-house, Nanette Rodriguez's phone. He's calling to see
24 where they are; he's calling to see when they are going to be
25 at the grow-house. There's no other explanation for why the

G9LVROD1

Summation - Ms. Estes

1 cell site matches up perfectly with those text messages.

2 Now let's look at August 20, 2015. This is when the
3 Michael Rodriguez phone texted Ivan Puello's phone at 7:41 a.m.
4 He says, "on the ninth." The cell site evidence shows that
5 there was a call at 7:38 a.m. and a call at 7:52 a.m. Both of
6 those calls hit off the cell tower you see there; the same cell
7 tower you keep seeing again and again, the one a block
8 and-a-half from the grow-house. So you know what's happening
9 here. He's telling Puello he's at the grow-house; he's on the
10 ninth, on the ninth floor in Apartment 909. And he's telling
11 him this in coded language because he doesn't want to get
12 caught.

13 Now, we've talked about how the defendant was in the
14 area of the grow-house regularly. But how else do you know
15 that this is his grow-house? It's very simple. He pays for
16 it.

17 So let's look at one of the money orders paying for
18 the grow-house, Government Exhibit 200. This money order is
19 dated June 4th, 2015. It's to 1199 Housing Corp. That's the
20 management company for that apartment building. As you can see
21 on the "from" line, it lists Ramon Cartagena, an address of 420
22 East 111th Street, Apartment 909. This money order was
23 obtained from Post Office 104551. As the postal inspector
24 testified, that's a post office located at 633 St. Ann's Avenue
25 in the Bronx. The money order is for \$1,000.

G9LVROD1

Summation - Ms. Estes

1 Now, remember the testimony of the postal inspector.
2 He told you that when this money order was purchased, other
3 money orders were purchased at that post office as part of the
4 same transaction. That means the same person went up to the
5 same clerk and purchased multiple money orders.

6 One of those money orders was the one you see at the
7 bottom here, from Michael Rodriguez to Park Well LLC. So from
8 the testimony of the postal inspector, you know that a money
9 order used to pay for the grow-house and a money order used to
10 make a payment for Michael Rodriguez were purchased as part of
11 the same transaction.

12 How do you know that the defendant is the one who
13 purchased these money orders? From the cell site evidence.

14 Now, as the postal inspector testified, the relevant
15 transaction was between 9:38 and 9:48 a.m. at that post office,
16 633 Saint Ann's Avenue in the Bronx. Where is the defendant's
17 phone at that time? It's right by that post office. That's
18 what Investigator Donaldson told you. During that short time
19 frame, from 9:38 to 9:40 a.m., the defendant's phone connects
20 to a cell tower two blocks from the post office. You can see
21 that here in Government Exhibit 7030, two short blocks away.
22 That is devastating evidence.

23 So let's think about this. The cell site tells you
24 that the defendant purchased money orders at the post office,
25 one he uses to pay for the grow-house, one he uses to make a

G9LVROD1

Summation - Ms. Estes

1 payment in his name. Your common sense tells you why he's not
2 making the grow-house payment in his name; he doesn't want to
3 get caught. He knows that what is going on in that apartment
4 is illegal and he's trying to conceal his connection to it.

5 Let's look at another money order paying for the
6 grow-house, Government Exhibit 201. This one is dated August
7 5th, 2015. Again, it's to 1199 Housing Corp. the management
8 company. And again, it lists Ramon Cartagena as who it's from,
9 420 East 111th Street, Apartment 909.

10 Again, as you've heard from the postal inspector, this
11 money order was purchased as part of the same transaction that
12 purchased the money order you see at the bottom here, also
13 Government Exhibit 201. That money order you see is from
14 Michael Rodriguez and it's to City Cars. These money orders
15 were purchased at a post office located at 700 Columbus Circle.
16 Now, that's close to the defendant's residence. It's also the
17 same post office that the defendant used to purchase the money
18 order we looked at earlier. This is the one he used to pay the
19 management company of the grow-house apartment in 2010, when he
20 wanted to be added as a resident of that apartment. He went to
21 that post office and got a money order there.

22 Now, turning back to the ones from August 5th, 2015,
23 again, how do you know the defendant purchased those money
24 orders? The cell site evidence. You can see it here in
25 Government Exhibit 703P. The post office is the green square

G9LVROD1

Summation - Ms. Estes

1 on the map; the cell site the defendant's phone connects to
2 during the time frame of the transaction is the one you see
3 where the two red lines intersect. This one is only about a
4 block away.

5 So again, your common sense tells you why the
6 defendant is doing this. He's putting postal money orders in
7 somebody else's name because he doesn't want to get caught
8 paying for the grow-house.

9 Now, ladies and gentlemen, let's review one more time
10 the many ways you know the defendant is connected to that
11 grow-house apartment.

12 You have the management company documents where he's
13 listed as a resident of that particular apartment. You have
14 the cell site evidence and the witness testimony putting him in
15 the area of the apartment on a regular basis. You have the
16 postal money orders that you know he bought that pay for the
17 grow-house apartment. You have the U-Haul storage unit leased
18 in his name where grow-house supplies were found. You have his
19 connection to Ivan Puello, his text messages with Ivan Puello,
20 where he's saying "on the ninth." Puello was the one outside
21 the grow-house apartment the day the search warrant was carried
22 out, and he was also at the U-Haul storage facility. You saw
23 him on surveillance there.

24 And finally, you have the defendant's frequent calls
25 with his sister who was caught in the grow-house apartment

G9LVROD1

Summation - Ms. Estes

1 trimming buds on a marijuana plant and who tried to clear out
2 the storage unit after the defendant was arrested.

3 Now, as you can see, the evidence against the
4 defendant and his co-conspirators is all intertwined. But one
5 thing is crystal clear: The defendant and his co-conspirators
6 were involved in a conspiracy to distribute marijuana from that
7 grow-house apartment.

8 Now, we've talked at length about the defendant's
9 involvement in the marijuana conspiracy.

10 So let's turn to the gun.

11 I expect that Judge Crotty will instruct you that you
12 may find the defendant guilty of Count Two if you find one of
13 two things: One, that he possessed the gun in furtherance of a
14 drug trafficking crime; or, two, that he carried the gun during
15 and in relation to a drug trafficking crime. If you find one
16 of these, the defendant is guilty.

17 So first I'll discuss the possession and furtherance
18 prong.

19 Now, here I expect that Judge Crotty will instruct you
20 that a firearm is possessed in furtherance of a drug
21 trafficking crime if it has a nexus to the drug trafficking
22 crime, for instance, if it's readily accessible to protect the
23 drug dealer, the drugs, or drug money, you can also consider
24 the type of gun, whether or not it's loaded, and how close it
25 is to drugs.

G9LVROD1

Summation - Ms. Estes

1 In contrast, a drug dealer might innocently possess a
2 firearm if it's an antique rifle that is used for hunting.

3 So you have to consider the circumstances of the
4 possession. And here, those circumstances point to one
5 conclusion: The defendant is guilty. He had the gun to
6 protect his marijuana business.

7 Now, you know that the defendant is a drug dealer, so
8 let's look at the other circumstances surrounding his
9 possession.

10 First, let's talk about where he got the gun. He got
11 the gun from two other drug dealers, from two co-conspirators
12 who dealt marijuana for him, one who also dealt crack cocaine.
13 The defendant bought the gun from them in order to resolve a
14 debt. They were borrowing money from him. He wanted to get
15 something in return, so he got the gun from those two friends.
16 He didn't go out and buy the gun legally; he didn't go to a
17 licensed dealer; he didn't go to a gun show. He bought the gun
18 from two drug dealers.

19 Let's consider the type of gun.

20 Now, you saw in the defendant's prison email that he
21 calls it a small-caliber handgun. In his interview at the U.S.
22 Attorney's Office he described it as small. He said it fit in
23 a jewelry box, a Tiffany box. So we are not talking about a
24 hunting rifle or something that could be used for sport. We
25 are talking about something small, something easy to conceal,

G9LVROD1

Summation - Ms. Estes

1 something readily accessible if there is any danger.

2 Third, let's think about where the defendant kept the
3 gun. He kept it in his apartment, where he also kept a stash
4 of marijuana. So again, it was readily accessible if there was
5 any danger to himself or to his marijuana stash.

6 The defendant also told you that on the day he was
7 arrested, which you know from the testimony of Special Agent
8 Walters was August 21st, 2015, he took the marijuana and the
9 gun out of his apartment together in a bag. The defendant had
10 marijuana that he's going to sell and he took it out of the
11 apartment with the gun.

12 MR. HANDWERKER: Judge, there's no evidence that he
13 was going to sell what he had with him.

14 THE COURT: The objection is overruled. It's fair
15 argument based on the evidence.

16 You can make your own arguments, Mr. Handwerker.

17 MR. HANDWERKER: Thank you.

18 MS. ESTES: Now, your common sense tells you why the
19 defendant had the gun. He had the gun because he's a drug
20 dealer. He had it to protect his high-quality marijuana, to
21 protect his grow-house enterprise. You know that a gun is a
22 tool of the drug trade. Having the gun made the defendant
23 safer. It also protected his drug money. And you know that he
24 had a lot of drug money, because that's what investigator
25 Guzman said. She said his business was doing well; his batches

G9LVROD1

Summation - Ms. Estes

1 were selling out very quickly; and his friends were borrowing
2 money from him. So that gun also protected his drug money.

3 Now, I expect that Judge Crotty will instruct you that
4 alternatively you can find the defendant guilty of Count Two if
5 you find that he carried the gun during and in relation to a
6 drug trafficking crime.

7 Now, you've heard that the defendant carried the gun
8 in a bag out of the apartment. He also said this in a prison
9 call, Government Exhibit 900. He said he was carrying the gun.

10 So the defendant is a drug dealer and he's leaving the
11 apartment with drugs that he's going to sell. Ladies and
12 gentlemen, of course he's carrying the gun during and in
13 relation to a drug trafficking crime. He's a drug dealer; he's
14 going to sell that marijuana; and he has the gun for protection
15 if anything comes up.

16 Now, the defense has pointed out the gun was unloaded.
17 But even without bullets in it, that handgun provided the
18 defendant power. If anything came up, he could flash the gun.
19 And if someone sees a gun, they don't know that it's not
20 loaded.

21 MR. HANDWERKER: Judge, this is becoming prejudicial.
22 There's no evidence --

23 THE COURT: Mr. Handwerker, this is all fair argument
24 based on the evidence that we've heard over the last day
25 and-a-half.

G9LVROD1

Summation - Ms. Estes

1 The objection is overruled.

2 MS. ESTES: Now, if someone sees a gun, they don't
3 know that it's not loaded; they don't know that there are no
4 bullets in it. It still can instill fear in someone. And by
5 doing that, it can still provide protection by scaring someone
6 off.

7 So, ladies and gentlemen, let's step back and think
8 about all you know about the gun.

9 You know the defendant, a drug dealer, bought it from
10 two other drug dealers, his co-conspirators. You know it was a
11 small handgun, something easy to conceal, something readily
12 accessible, if there was any danger to the defendant, to his
13 drugs, or to his drug money. You know he kept it in his
14 apartment, where he kept a stash of marijuana. And you know
15 that on the day he was arrested, August 21st, 2015, he took the
16 gun and the stash of marijuana out of his apartment together in
17 a bag. So he's a drug dealer with a gun he bought from other
18 drug dealers, and he keeps the gun with his marijuana.

19 This is straightforward.

20 The defendant is guilty of Count Two.

21 Ladies and gentlemen, that is the case against the
22 defendant, Michael Earl Rodriguez.

23 After you review the evidence in the case, listen
24 closely to the judge's instructions and use your own common
25 sense. I expect that you'll come to the only conclusion

G9LVROD1

Summation - Mr. Handwerker

1 consistent with the evidence: That the defendant is guilty of
2 both counts of the indictment.

3 THE COURT: Thank you, Ms. Estes.

4 Mr. Handwerker.

5 MR. HANDWERKER: Judge, I have an application to make
6 outside the presence of the jury.

7 THE COURT: Do you want to make your closing
8 statement?

9 MR. HANDWERKER: Yes.

10 THE COURT: Please go ahead.

11 MR. HANDWERKER: I think I'd rather be heard first.

12 THE COURT: I'm not going to hear it.

13 Do you have a closing argument please.

14 MR. HANDWERKER: Good morning, ladies and gentlemen of
15 the jury.

16 Permission of the Court --

17 THE COURT: Yes.

18 MR. HANDWERKER: -- staff, prosecution, Mr. Rodriguez.

19 I obviously have a very different take on the
20 prosecution's case, their theory and their evidence. And I'd
21 ask you just to bear with me for a couple of minutes because I
22 will get there with you, especially that gun count.

23 You're going to hear the law from the judge. You are
24 the judge of the facts.

25 Did he have it? Yes. Has he ever used it, brandished

G9LVROD1

Summation - Mr. Handwerker

1 it, shown it, threatened anyone, any evidence of that? Have
2 you heard about that? That's a theory that they can't prove.
3 And the judge will tell you if there's no nexus, if there's no
4 in furtherance of anything, you must vote not guilty as to
5 Count Two.

6 Let me not jump too quickly. I want to go slow.

7 In the people's opening statement, which is not
8 evidence, they said to you by the end of this trial, you will
9 have seen photos and documents and you will have heard
10 testimony showing the defendant's marijuana operation, the
11 operation he worked with with others to maintain and the one
12 that he needed that gun to protect.

13 What are they talking about?

14 Investigator Guzman took the stand. She was at the
15 meeting I was at. Two very bad people were nuisances to
16 Michael Rodriguez, trying to sell him a gun.

17 Now, wait a second. The transaction takes place. Two
18 guns, but give one back, keep a small one in a Tiffany box with
19 no bullets? What are we talking about here?

20 And let me ask you this: A conspiracy to possess with
21 the intent to distribute marijuana, are they talking about the
22 two individuals that he referred to in the government's proffer
23 session or are they talking about Nanette Rodriguez and Ivan
24 Puello? What are they talking about? What conspiracy are they
25 asking you to find? If you can't prove it, just say it. Drug

G9LVROD1

Summation - Mr. Handwerker

1 dealers, guns, weapons, fear. That's not Michael Rodriguez.
2 Investigator Guzman told you, he was competent, he was calm, he
3 was respectful. No talk about him lying.

4 She wavered a little. I believe most of what he said.
5 She couldn't cite anything where she found him not credible and
6 not worthy of belief. He went in there and he told them the
7 truth.

8 In my opening statement, I said the following
9 regarding the gun, and I stand by it: There is not a scintilla
10 of evidence in this case in all of this testimony, these carts,
11 these lawyers, the whole ball of wax, that can connect the
12 weapon in this case that is found to any drug trafficking
13 crime.

14 I submit to you now that's where we stand on the gun,
15 but I'm going to come back to it.

16 Ladies and gentlemen, I want to thank you for being
17 with us these few days. You'll be done soon. You'll go back
18 to your normal life. It's a beautiful morning this morning. I
19 hope you enjoyed your presence here for a couple of days.
20 Sometimes you've seemed more alert than others.

21 I submit some of the government's case -- I'm not
22 going to review every witness with you. See, what happens in
23 the federal court, which, I submit, is not fair, but that's the
24 way we have to play the game, prosecution goes first, defense
25 counsel, then prosecution goes again. So if I forget anything,

G9LVROD1

Summation - Mr. Handwerker

1 they'll remind you. But if they remind you, stick up for
2 Michael Rodriguez; give Michael Rodriguez a fair trial. Say
3 what Mr. Handwerker would argue on behalf of Mr. Rodriguez.

4 This is the finest system of justice in the world.
5 Our Constitution, our democracy relies on people like you to
6 become jurors, to weigh the evidence, to weigh it fairly and
7 impartially, without prejudice.

8 But I submit to you that talk about drug dealers --
9 we'll go over the phone calls -- she's asking you to speculate.
10 I'm going to ask you to draw different conclusions from the
11 evidence or the lack of evidence. He still sits here draped in
12 the flag and he says, I'm not guilty; bring forth evidence and
13 bring forth your evidence by trustworthy, reliable, competent,
14 and credible testimony.

15 Ladies and gentlemen, the judge is going to charge you
16 that you are to use your common sense in this case, and I ask
17 you to do that. He's going to charge you if you have to
18 hesitate, if you have to hesitate reaching any conclusion in
19 this case, that's the equivalent of doubt. Reasonable doubt,
20 that's what's here: Doubt based upon reason, logic, the
21 evidence.

22 I'm not running away from the evidence.

23 They can call Donaldson, within ten blocks, how far
24 away the cell sites are, evidence or lack of evidence.
25 Narcotics conspiracy with who? They have multiple choices

G9LVROD1

Summation - Mr. Handwerker

1 here: The two gentlemen that he spoke of or his sister and
2 Ivan Puello.

3 The indictment, as you know, is evidence of nothing in
4 this case. I'd ask you just to consider it as a charging
5 document.

6 Let's talk about some of the testimony.

7 Richard Demurjian, the case agent, 28 years DEA,
8 obviously has been around. I would assume, as you, I think,
9 can fairly assume, when he's going to be testifying, he reviews
10 his documentation, whatever he prepares in the course of the
11 case.

12 I asked him one question, because I think it's
13 relevant and I think you should consider it relevant also: Did
14 you conduct surveillance?

15 I'm not sure. Yeah, I conducted surveillance.

16 Well, how long did you conduct surveillance for?

17 He wasn't sure.

18 He made me show him the complaint in this case to
19 refresh his memory that it was over a three-to-four-week
20 period, a total of five to ten times. He never saw the
21 defendant at the grow-house. He can't get away from it. With
22 all their fancy charts, what's circled, what's X'd, what's
23 within the cell sites, Donaldson, he never saw him at the
24 grow-house.

25 Let me stay with the grow-house for a second.

G9LVROD1

Summation - Mr. Handwerker

1 420 East 111th Street, Apartment 909, you saw
2 documents in this case where Michael Rodriguez attempted to get
3 on the lease. No alias, no fraud, no fake birth certificate.
4 I'm Michael Rodriguez in 2010 and I'd like to get on the lease.
5 And we know nothing after 2012.

6 Let them show you money orders. This is not a money
7 laundering case. Whatever is there, let them make fair
8 argument on. But they have to prove a narcotics conspiracy, an
9 agreement.

10 Ladies and gentlemen, I'm telling you the evidence is
11 crystal clear. On the day in question, the day he was
12 arrested, he had half a pound of pot and a small-caliber,
13 unloaded firearm. Read the transcript; that's exactly what he
14 said. Half a pound of pot narcotics conspiracy with whom? Is
15 there any evidence that came from the grow-house? That he
16 picked it up? They delivered it to him? He had a half a pound
17 of pot and an unloaded gun. And the unloaded gun was in
18 furtherance of nothing.

19 Two pieces of you-know-what came in off the street and
20 he wanted to get rid of them. I'll give you \$300, take one
21 away. Just leave me alone. That's, in essence, what happened
22 here. Maybe they wanted to charge him with crack cocaine
23 sales, like these other two pieces of you-know-what. That's
24 not Michael Rodriguez.

25 Investigator Guzman got to know him in the meeting we

G9LVROD1

Summation - Mr. Handwerker

1 had at the U.S. Attorney's Office. He's a pleasant guy. He
2 pays his bills. There were tax returns submitted to 420 East
3 111th Street in furtherance of his application to be admitted
4 to the building. No fraud. Background checks, money orders,
5 birth certificate. They put it up on the screen. Yeah, it's
6 legit. He tried it back then, he couldn't do it.

7 Is there any evidence in this case, besides their
8 speculation and evidence of phone calls and cell site
9 information, that he was still a part of a narcotics
10 conspiracy, a marijuana conspiracy? Because all we know is on
11 the day in question, he had a half a pound of pot and an empty
12 gun. That's what you have here.

13 U-Haul storage unit, more pictures. They look like
14 the same types, the same H²O canister. U-Haul in the Bronx,
15 not far from the East Side, cell site, whatever they want to
16 say. But when was the stuff put there and who put it there?
17 Any evidence along those lines?

18 George Parker, when was it opened? Who visited? Who
19 had authority? When was the stuff put there? We know he had
20 the unit for a couple of years under his name. But if he's no
21 longer in that trade, if he's no longer in that business, just
22 because his sister was found there doesn't mean he's a part of
23 it.

24 Where's Raymond Cartagena? Could this be his
25 conspiracy? Because this guy had half a pound of pot and an

G9LVROD1

Summation - Mr. Handwerker

1 empty gun and that's all you're stuck with, no matter how they
2 want to dress it up.

3 Moises Walters did the search of 420 East 111th
4 Street. No fingerprints lifted. Why not? What business are
5 you in? To investigate and prosecute criminal conduct under
6 the federal laws.

7 Okay. I respect that.

8 But what did you do?

9 Let me ask you this: And I'm not making light of
10 this, but if they have to prove something beyond a reasonable
11 doubt, I'm what stands between Mr. Rodriguez and the U.S.
12 Constitution.

13 Vadim Astrakhan, do you remember him, the chemist? He
14 seemed to think this was funny. Well, let me ask you a
15 question, Vladim or Vadim, where does evidence come from? Now,
16 am I poking holes in something or am I sleeping? Am I missing
17 something? He didn't know where it came from and he seemed to
18 think it was funny.

19 Oh, I remember this case. And he held up the bag.

20 Do you remember that testimony?

21 I didn't think it was funny at all. I'm not sure what
22 he thought was so funny about it.

23 The fact that Michael Rodriguez is seen in the
24 vicinity of the grow-house is evidence of nothing, I submit to
25 you.

G9LVROD1

Summation - Mr. Handwerker

1 Let me go through a few things. Let me just cover
2 what the government said in their closing statement.

3 They spoke about the gun, how it was used for
4 protection. No evidence of that. Calls to his sister. I
5 think you folks call your siblings. Nothing unusual there.

6 Let's go to the law the judge is going to charge you
7 on, the handgun.

8 I submit to you -- and please wait to hear the charge
9 from the Court -- he's going to tell you in words or substance,
10 Count Two alleges the violation of 924(c) of the federal
11 criminal code. The provision makes it a crime for any person
12 during and in relation to any drug trafficking crime to use,
13 carry, or in furtherance of any such crime a firearm. And the
14 allegation in the indictment is that the defendant during and
15 in relation to a drug trafficking crime for which he may be
16 prosecuted in a court of the United States, namely, the
17 conspiracy to distribute, possess, with the intent to
18 distribute marijuana charged in Count One in this indictment,
19 knowingly did use and carry a firearm and, in furtherance of
20 such crime, did possess -- it's a lot of words, but I'm going
21 to try to help you break it down.

22 The Court is going to speak to you and tell you in
23 words or substance that in order to prove the defendant used
24 the firearm, the government must prove beyond a reasonable
25 doubt an active employment, not a Tiffany box and a bag, active

G9LVROD1

Summation - Mr. Handwerker

1 employment. Michael Rodriguez, active employment. Listen to
2 the judge's charge and look at the government and say, Where is
3 the active employment here? Be fair. Don't let them get away
4 with drug deal, guns, violence, fear. That's not what we are
5 about. Our country is better than that. The mere possession
6 of a firearm at or near the site of the crime without active
7 employment as I just described it is not sufficient to
8 constitute use of a firearm.

9 A firearm is carried in relation to a drug trafficking
10 offense if the firearm had some purpose or effect with respect
11 to the drug crime.

12 Their theory is protection. That requirement is
13 satisfied if the firearm facilitated -- they used that word
14 too -- or had the potential to facilitate the drug trafficking
15 offense. Potential to facilitate. Anything could potentially
16 facilitate that.

17 On the other hand, this requirement is not satisfied
18 if the carrying of the firearm was entirely unrelated to the
19 drug crime. That's what you have here. There's no question
20 about it.

21 To possess a firearm in furtherance of a narcotics
22 crime means that the firearm helped promote, accomplish,
23 advance, or achieve the goal or objective of the underlying
24 offense.

25 Let me stop for a second.

G9LVROD1

Summation - Mr. Handwerker

1 On August 21st, 2015, Mr. Rodriguez spent the night
2 with the mother of his child. She was out all night. He gets
3 up at 6:40 in the morning and goes to the gym. She was out all
4 night. He's fighting her for custody. He says to himself,
5 This woman is irrational. And Inspector Guzman told you about
6 this. He was fighting for custody. She's nuts. She's out all
7 night. She's capable of anything. Let me take my stuff with
8 me so that she doesn't harm herself, harm me, cause me
9 problems, custody, so on and so forth. So he took the bag with
10 him and that's when he was arrested. No bullets. Half pound
11 of pot. That's it. No grow-house. U-Haul, when, where, who?
12 We don't know.

13 Ladies and gentlemen, the judge is going to also
14 charge you if you vote not guilty as to his involvement in a
15 drug trafficking crime, you must acquit as to Count Two, don't
16 even go to Count Two. So if they can't prove him as a member
17 of a conspiracy -- and I submit to you they have not -- you
18 must acquit as to Count Two.

19 Just listen to this one. I'm not going to do anything
20 more on the gun, I don't think.

21 The mere presence of a firearm at the scene of a drug
22 trafficking crime is not enough. The firearm must have had
23 some nexus, that is, purpose or effect, with respect to the
24 underlying drug offense, such as where the firearm is readily
25 accessible to protect drugs, drug proceeds, or the drug dealer

G9LVROD1

Summation - Mr. Handwerker

1 himself.

2 There has to be a nexus. Not good enough to have a
3 bag with it in an enclosed box, but just being in a bag. We've
4 heard nothing about money. She was talking about money before.
5 We know the evidence had money orders; he pays his bills.

6 In deciding whether there is such a nexus, you may
7 consider the accessibility of the firearm. Whether the firearm
8 was loaded, you can consider that, fair game, fair comment.

9 We are not sitting here running away. We pled not
10 guilty because we are not guilty of being in a conspiracy, and
11 that gun is nonsense. I don't like guns. But here -- and I'll
12 read you his own words, small-caliber, unloaded firearm. So
13 the Court will charge -- you consider whether the firearm was
14 loaded, the type of weapon, or whether or not the defendant
15 legally possessed it.

16 Let's review, if we may, some of the calls.

17 I don't have the fancy clickers or the tape-recording.
18 I'm going to read you the transcript and I hope that's
19 sufficient for me.

20 August 31st, 2016. That's very recent; that's about a
21 month ago, less than a month ago. Michael says on the phone:
22 Because they are saying cause I had spoke to the DA, right?
23 Told her why I was carrying the gun, custody. Gave her the
24 whole story with Kacey, the lady who's out all night, who's the
25 mother of his child, who he's petrified of and doesn't want his

G9LVROD1

Summation - Mr. Handwerker

1 child with her. See there's -- he's a defendant in a criminal
2 case and it's not easy to sit there. And I'm making noise,
3 objecting. And I apologize to you if I'm rude at times, if I
4 was rude. But, ladies and gentlemen, they have to present
5 evidence, and they are only doing their job. They have to
6 connect Mr. Rodriguez to the crime charged. They can't just
7 say drug dealer, half a pound of pot and a firearm, because
8 that doesn't cut it.

9 And you know what? I submit to you I'm going to read
10 these transcripts, you'll get a feel for who Mr. Rodriguez
11 really is. And he has no burden. So he didn't testify, didn't
12 called any witnesses. That's okay. You can't hold that
13 against him.

14 Told her why I was carrying the gun, gave her the
15 whole story with Kacey and everything, who gave me the gun and
16 all that stuff. And the paper they had, it said -- I think
17 they can use against me later.

18 The email of 9/9/2015, where he says he admits, I got
19 caught with less than half a pound of weed and an unloaded,
20 small-caliber gun.

21 The conversation from September 19, 2015, this is the
22 conversation where he says, There's a lot of people here with
23 guns. I just want to read the end of it. He says, Mine was in
24 the bag. No bullets, no nothing, so yeah.

25 Now, this last conversation which you heard the

G9LVROD1

Summation - Mr. Handwerker

1 telephone conversation, Mr. Rodriguez and I are familiar with
2 that call. And he gets angry during that conversation. And
3 maybe you might say, That's the real Michael Rodriguez. You
4 can think whatever you want to think.

5 Let's analyze what he's saying in this conversation.

6 And you don't even want to know the half, boy, you'd
7 be sick to your stomach. And I'm not going to tell you, okay,
8 because I'm not going to tell you who it was that -- somebody
9 called the DEA because they had gotten in trouble. So they
10 went in and said a whole bunch of crazy stuff about me and
11 that's what got me here. So I'm not even going to tell you who
12 that is because I don't want you to approach them. I don't
13 want you to say nothing. You act like everything is fine and
14 you know nothing, okay?

15 Ladies and gentlemen, it's a man who's in jail, who's
16 being charged with serious crimes, who's not saying to somebody
17 out there, Go hurt somebody. But he's telling this woman,
18 somebody has put me here.

19 (Continued on next page)
20
21
22
23
24
25

G9LQROD2

Summation - Mr. Handwerker

1 MR. HANDWERKER: (Continued) In essence, I think if
2 you read between the lines, please listen to it or ask for a
3 transcript of the conversation. "They went in and said a whole
4 bunch of crazy stuff about me, and that's what got me here so
5 I'm not even going to tell you about it" -- I'm using my own
6 words now. "I'm not even going to tell you who that is because
7 I don't want you to approach them." In jail charged with
8 serious crimes, showing a little dignity. I'll fight my battle
9 and I'll submit to you, you know who gave him up, those two
10 people that he's talking about that sold him the guns, those
11 indescribable human beings. They sell him a gun. Then they
12 get him locked up? And he's sitting here?

13 Thank you for your patience, ladies and gentlemen.
14 I'll be with you in a moment.

15 Ladies and gentlemen, as I told you, I'm not going to
16 have another opportunity to address you. We've only been here
17 a couple of days. I sincerely want to thank you on behalf of
18 myself and this Honorable Court. By the way, I've never had
19 the pleasure of trying a case in front of this judge. This is
20 the way it's supposed to be done. Fair and impartial. And I'd
21 ask you to do your job the same.

22 If there is anything you need read back, that's what
23 the court reporters are for. If you don't believe the
24 testimony or you want to hear the testimony, you want to hear a
25 tape-recording, just send the Judge a note.

G9LQROD2

Rebuttal - Ms. Houle

1 Reasonable doubt based upon reason, logic, common
2 sense and the evidence. Ladies and gentlemen, the Court will
3 charge you, or has already charged you, it is not the quantity
4 of the evidence but the quality of the evidence. You're going
5 to make an important decision, and reaching a verdict in this
6 case, I submit to you, is an important decision. It's your
7 duty as members of the citizenry to take this very seriously,
8 and I hope you do. If you hesitate, that is the equivalent of
9 reasonable doubt.

10 Ladies and gentlemen, there is only one verdict you
11 can reach in this case, that's not guilty as to both counts of
12 the indictment.

13 Thank you very much.

14 THE COURT: Thank you, Mr. Handwerker.

15 Does the government have a reply?

16 MS. HOULE: Yes, your Honor.

17 Ladies and gentlemen, you've just
18 heard a lot of argument from the defense. Now let me be clear,
19 the defendant didn't have any burden here. The defense didn't
20 need to get up and make any sort of argument, but he did. So
21 now you are entitled to very carefully scrutinize those
22 arguments, the same way that you scrutinize the government's
23 arguments. I think you need to pay very close attention to
24 what was just argued and to think about it carefully.

25 Let's walk through it, some of the points the defense

G9LQROD2

Rebuttal - Ms. Houle

1 counsel just made, together. Let's start with the gun.
2 Defense counsel has essentially just argued to you that the gun
3 in this case and the drugs in this case are entirely unrelated.
4 That doesn't make any sense. Think about what the defense is
5 asking you to believe; that the defendant was an admitted drug
6 dealer. He sold high-end marijuana. He was successful, and he
7 kept a gun in his apartment where he also kept drugs, and that
8 he moved the gun and the drugs together but that they had
9 nothing to do with each other. That doesn't make any sense.
10 By the defendant's own admissions, you know that that gun was
11 connected to drugs. At every phase of the defendant's story,
12 the gun is connected to drugs.

13 Let's take it step by step. First, what did you hear
14 that the defendant said about where he got that gun? From drug
15 dealers. From drug dealers who the defendant was selling drugs
16 with. He said that they were selling drugs for him. They owed
17 him money. He bought the gun. The gun is connected to --

18 MR. HANDWERKER: Excuse me. I hate to interrupt.
19 There is no testimony they were selling drugs for him.

20 MS. HOULE: That is in the testimony.

21 THE COURT: The objection is overruled.

22 Go ahead, Ms. Houle.

23 MR. HANDWERKER: Judge, excuse me. Would you tell
24 them it's their memory that controls?

25 THE COURT: I have that in my instructions.

G9LQROD2

Rebuttal - Ms. Houle

1 Go ahead, Ms. Houle.

2 MS. HOULE: You remember what Inspector Guzman said
3 about what defendant said at that meeting at the U.S.
4 Attorney's Office. The defense has focused on those two
5 individuals and described them in his closing as a nuisance to,
6 two pieces of you-know-what who he dealt with. First of all,
7 ask yourself why we're hearing about these two pieces of
8 you-know-what. Because the defendant associated himself with
9 them. The defendant was working with them. The defendant was
10 buying a gun from them. That's why they're part of this story.
11 They were part of the defendant's drug business. So from the
12 start the gun is connected to the drugs.

13 On that point that defense counsel has just made about
14 suggesting that the defendant was buying this gun as sort of a
15 favor he just wanted to get rid of them. Why did he keep the
16 gun? Why did he keep it with his drugs? You know why.

17 Second, what does the defendant say about what happens
18 after he buys the gun? Where does he keep it? He keeps it in
19 an apartment where he keeps drugs. You know that he keeps
20 drugs there. The gun stays connected to the drugs.

21 On this point, the defense has suggested that the gun
22 wasn't being used for protection of the drugs. That doesn't
23 line up with the evidence that you've heard in this case.
24 You've heard about what the defendant said about the people
25 that he was dealing with. Drug dealers who were selling

G9LQROD2

Rebuttal - Ms. Houle

1 multiple guns illegally, who were using and selling crack, one
2 of whom the defendant says has a prior conviction for
3 manslaughter. Remember what the defendant said about what
4 those people thought about him; that he had a lot of money;
5 that he was successful. Those all sound like reason that a
6 drug dealer should be worried for his own safety and for the
7 protection of his drugs and his drug proceeds.

8 This is a straightforward case. That is common sense
9 that the gun was protecting the drugs. The gun was there if
10 the defendant ever needed it to protect him and to protect his
11 drugs. And on this the defense has focused several times in
12 its closing, on the fact that there were no bullets. You heard
13 that multiple times.

14 First of all, you'll hear Judge Crotty's instructions
15 on the law. There is no requirement in that statute that for
16 something to qualify as a firearm that it needs to be loaded.
17 You also know from your common sense that an unloaded gun is
18 still dangerous and it still affords protection. It is amazing
19 to me that that argument could even be made right now in any
20 city. You know how dangerous an unloaded gun can be and what
21 power it could prove to someone else. When a gun is pointed in
22 someone's face, they don't know if it's loaded. And you know
23 that when a gun is pointed at someone else, it can just as
24 easily provoke violence against the person who's pointing it or
25 against others that are around. The unloaded gun could still,

G9LQROD2

Rebuttal - Ms. Houle

1 of course, provide protection to those drugs. So we've heard
2 about how the defendant got the gun from drug dealers, and
3 we've heard about where he kept the gun -- with the drugs.

4 So let's think about what the defendant said happens
5 next. What happens when the defendant moves his stash? The
6 drugs move; the gun moves. The gun follows the stash. And the
7 gun continues to protect that stash the same way that it did
8 when they were together in the defendant's apartment. The gun
9 follows the stash. On this point, I want to address an
10 argument that the defense just made. Mr. Handwerker focused on
11 the amount of drugs that the defendant had with him when he was
12 moving his stash. That is a distraction. The defendant was a
13 drug dealer moving his stash; a stash which you know from the
14 evidence was high-end marijuana, and you know from what the
15 defendant said it was in high demand. The gun followed the
16 stash. That's what's important. Don't be distracted.

17 And don't be fooled by any suggestion that what the
18 defendant was moving in that moment was the extent of the
19 defendant's stash. Use your common sense there. You know that
20 the defendant was dealing with a full-scale marijuana grow and
21 distribution operation. You know that there was a lot more
22 where that stash came from. You know that the defendant had a
23 lot to protect.

24 Finally, Mr. Handwerker focused on the defendant's
25 claim that he was moving his drugs and his gun together because

G9LQROD2

Rebuttal - Ms. Houle

1 he was afraid that the mother of his child was going to find
2 them, and the defense has suggested that that somehow means
3 that the gun and the drugs are completely unrelated. That's
4 another distraction. Let's think first about whether that
5 argument makes any sense. It doesn't. Think about what the
6 defense is saying to you there. They're saying that the
7 defendant moved his gun and his drugs together because he was
8 afraid of getting caught; because he was afraid that his
9 drug-trafficking enterprise was going to be exposed. It's
10 still all part of the defendant's drug operation. But more
11 importantly, it doesn't matter. It doesn't matter whether the
12 defendant was moving his drugs because he was worried that his
13 girlfriend would find them or because he was worried that the
14 police would find them or because he just wanted a change of
15 scenery. It just doesn't matter. When the defendant kept that
16 gun in an apartment with his drugs, he committed the crime
17 charged in Count Two. When he moved that gun and his stash
18 together, he committed the crime charged in Count Two.

19 The defense has tried to confuse you by focusing on
20 certain elements of the law by cherry-picking terms.
21 Employment. Brandishing. Don't be confused. Listen to the
22 Judge's instructions on the law. Remember what Ms. Estes
23 presented to you about the elements. There is no requirement
24 that the defendant employed or used or brandished a firearm as
25 part of the crime charged. Listen to the Judge's instruction.

G9LQROD2

Rebuttal - Ms. Houle

1 Listen that the government can prove its case based on whether
2 the defendant carried or possessed a firearm in connection with
3 his drug-trafficking crime.

4 Let's talk about the drugs. The defense again has
5 tried to distract you focusing on other people, suggesting that
6 the defendant had no connection to this marijuana conspiracy.
7 To believe what the defense has told you, you would have to buy
8 into an incredible number of completely miraculous
9 coincidences. Let's think it through.

10 The defendant is an admitted drug dealer who puts his
11 name on an apartment that later turns out to be gutted for a
12 marijuana grow operation. But that's not his marijuana; not
13 the marijuana that he admitted he sold. That's other
14 marijuana. That's strange.

15 But it's not just an apartment that the defendant puts
16 his name on that later turns on to be a grow house, right?
17 It's one where his sister gets caught red-handed trimming a
18 marijuana plant and where his close associate just happens to
19 show up while law enforcement is there. And, remember, he
20 spoke with those two individuals all the time. You saw the
21 call frequency analysis from Investigator Donaldson. He spoke
22 with one of them more than six times a day. And the other one
23 you saw he was texting about being on the 9th. Is that all
24 just a coincidence? Of course not.

25 And it's not just an apartment that later turns out to

G9LQROD2

Rebuttal - Ms. Houle

1 be a grow house where the defendant's sister and his close
2 associate are found. It's one where the defendant himself is
3 regularly. You saw that in his cell site analysis, and you saw
4 that from the security guard who testified. He saw the
5 defendant there multiple times per week over the whole time he
6 worked there, four years. What was the defendant doing there?
7 It doesn't make sense. On this point the defense has focused
8 on the fact that Special Agent Demurjian testified that the DEA
9 did not themselves observe the defendant at the grow house.
10 That's another distraction. The fact that Special Agent
11 Demurjian didn't see the defendant there is irrelevant. He
12 wasn't conducting 24/7 surveillance. He told you that. You
13 already have proof that the defendant was there on a regular
14 basis. You have it from his cell phone. And you have it from
15 the security guard who saw him there.

16 Let's turn back to these coincidences, because even
17 outside of the ones that I've just described, there's the money
18 orders. If this is all a coincidence, then the defendant had
19 the very unfortunate circumstance of buying money orders that
20 happened to be used to pay for that grow house apartment.
21 Let's take it to the logical conclusion, actually, that the
22 defendant had the even more unfortunate coincidence of being
23 within a few blocks of a post office at the exact minute that
24 the money orders were being purchased to pay for the grow
25 house. And, by the way, this mysterious person who's buying

G9LQR0D2

Rebuttal - Ms. Houle

1 the money orders is also buying money orders to pay the
2 defendant's bills. You heard the defense say that. You saw
3 money orders; the defendant paid his bills. Yes, his bills,
4 including the grow house rent. Luck of all luck, with those
5 money orders, that happens to the defendant more than once at
6 totally different post offices in totally different parts of
7 the City. That's remarkably bad luck.

8 But you know that that's not even where the bad luck
9 would have to end. The defendant then opens up a storage unit
10 in his name, and then that storage unit turns out to be full of
11 marijuana grow house supplies. Then the defendant has the
12 tragic misfortune of being in the area of that storage unit on
13 a regular basis when he lives more than 30 blocks south on the
14 opposite side of the City. What was he doing there? How could
15 he not know that his storage unit was filled with grow house
16 supplies? Of course he knew.

17 You also heard what the U-Haul representative said.
18 The defense has focused on who had access to the unit. You
19 heard that the defendant's sister could not get into that unit
20 when she tried to to clear it out after he was arrested. She
21 didn't have access. The defendant had access. It was his
22 storage unit.

23 All of those coincidences would have to be some really
24 bad luck. They would have to make the defendant the most
25 unlucky man in the history of the world. How could one man be

G9LQROD2

Rebuttal - Ms. Houle

1 in the wrong place at the wrong minute all the time? He just
2 happens to be in the wrong place at the wrong minute when the
3 post office money orders are being purchased? He just happens
4 to be near the grow house at the exact minute that his text
5 messages show that he's going to be there? He just happens to
6 be near the grow house on a regular basis? He just happens to
7 be near the storage facility on a regular basis when he doesn't
8 live anywhere near there? That's impossibly bad luck, because
9 it's impossible. It makes no sense. It is ridiculous.

10 Mr. Handwerker told you in his opening that, like the
11 government, he wanted you to focus on using your common sense.
12 Well, I think you should take him up on that because applying
13 common sense to these facts bears only one result: The
14 defendant was unmistakably involved in the operation of that
15 grow house. It's the only logical conclusion. It was part of
16 the marijuana dealing that he admitted to. The defendant
17 participated in a marijuana conspiracy, and he is guilty on
18 Count One.

19 I'd like to spend just a second here on the burden of
20 proof because the defense has focused on that in his closing
21 statement. He's talked about that standard and how high it is,
22 and that the government has to prove its charges beyond a
23 reasonable doubt. That is the standard. Of course it is the
24 standard. It is the standard in every criminal case in the
25 history of this country. It has been met before, and it has

G9LQROD2

Rebuttal - Ms. Houle

1 been met here. Reasonable doubt is doubt based in reason, in
2 common sense; not conjecture, not guesswork, not just mere
3 hesitation as the defense described it. It's a standard guided
4 by common sense. Common sense tells you that there is no
5 reasonable doubt here. The defendant was involved in a
6 marijuana conspiracy. He possessed a gun in connection with
7 his drug-trafficking crime.

8 Shortly after I sit down, I expect that Judge Crotty
9 is going to instruct you on the law here, and he will tell you
10 that what I say is not evidence and what Ms. Estes said was not
11 evidence and what Mr. Handwerker said was not evidence. You,
12 the jury, are entrusted with finding the facts in this case.
13 Look past the distractions. Look at the evidence. We told you
14 at the beginning of this trial that it's a straightforward
15 case, and it is a straightforward case, and it is an important
16 case. It's important to the defendant for obvious reasons, and
17 it is important to the government because we are charged with
18 enforcing this nation's drug and gun laws.

19 You know all of the ways that the defendant is
20 connected to that marijuana conspiracy: His statements, his
21 grow house, his money orders, his texts, his location, his
22 storage unit, his statements. You know all the ways that that
23 gun was connected to the defendant's marijuana conspiracy. He
24 bought it in connection with his business. He kept it in
25 connection with his business. He moved it in connection with

G9LQROD2

Rebuttal - Ms. Houle

1 his business. The gun followed the stash.

2 I'd like to end by bringing you back to that call that
3 Ms. Estes just played. The defense has tried to distract you
4 from what is really going on in that call. You've heard it
5 twice. You know what was going on in that call. The woman on
6 the phone mentions Ivan, who you know is the defendant's
7 co-conspirator. And the defendant becomes enraged. He calls
8 her stupid and he says, "You don't understand" and maybe she
9 didn't, but you understand.

10 At the end of this trial, you understand. You know
11 what the defendant was trying to cover up on that call. It's
12 the same thing that his lawyer is trying to distract you from
13 now. The defendant worked with others to run a successful drug
14 operation, and he possessed a firearm in connection with that
15 drug business. The defendant is guilty as charged.

16 THE COURT: Before I give you my instructions, we will
17 take a morning recess. It will be about 15 minutes.

18 (Jury not present)

19 THE COURT: Do you want to put something on the
20 record, Mr. Handwerker?

21 MR. HANDWERKER: Judge, I'd like to object to the
22 government's revolving theories of conspiracy. I submit to the
23 Court they had varied the indictment by charging yet another
24 conspiracy. The conspiracy he was charged with, I believe, was
25 the marijuana conspiracy along with his sister, Ivan Puello,

G9LQROD2

Rebuttal - Ms. Houle

1 Mr. Cartegena, etc. During the government's closing argument,
2 they seemed to mention yet another conspiracy; that conspiracy
3 between two individuals that he was referring to when he met
4 with the government in proffer sessions. So they have varied
5 the indictment, and to be quite frank, I was not sure what to
6 sum up on because I didn't know which fight we were fighting.
7 I move for a mistrial, Judge.

8 THE COURT: Does the government want to be heard?

9 MS. ESTES: Yes, your Honor. Our position is just
10 it's the exact same marijuana conspiracy. The defendant
11 operated a grow house. He gave some of the marijuana to these
12 individuals to sell. He also operated the grow house with
13 Nanette Rodriguez and Ivan Puello. The defendant is the center
14 of this marijuana conspiracy. It is one conspiracy.

15 THE COURT: The objection is overruled.

16 MR. HANDWERKER: Judge, could I put one other thing on
17 the record, please?

18 THE COURT: Yes.

19 MR. HANDWERKER: And I apologize if I interrupted the
20 government during certain moments, but just now when ADA Houle
21 was referencing multiple firearms, possession of empty unloaded
22 firearms in today's society, I think playing to the fears of
23 the jury in terms of what is going on in our country,
24 unfortunately, I think it was completely inappropriate,
25 comparing the danger that an empty firearm holds and relating

G9LQROD2

Charge

1 people being killed on the streets --

2 THE COURT: I think it's commonplace that guns do
3 terrible damage in our society. I think it is a
4 well-recognized phenomenon. I think it is a fair comment.

5 In any event, you've made your objection. It's on the
6 record.

7 MR. HANDWERKER: Thank you, Judge.

8 THE COURT: We will take about ten minutes, and I will
9 start with my charge.

10 (Recess)

11 (Jury present)

12 THE COURT: I told you on Monday how important your
13 service is to our country and our system of justice. You have
14 been most conscientious in your attendance, your punctuality
15 and the complete attention you have given during the trial.

16 I am going to read the instructions to you now on the
17 law, but I want you to know that I am going to send these
18 instructions into the jury room. There will be 12 copies so
19 you don't have to take notes as you listen.

20 Do not single out any particular instruction as alone
21 stating the law. You should consider instead my instructions
22 as a whole.

23 We are now approaching the most important part of 24
24 case: Your deliberations. You have heard all of the evidence
25 as well as the final arguments of the lawyers for the parties.

G9LQROD2

Charge

1 Before you retire to deliberate, it is my duty to instruct you
2 as to the law that will govern your deliberations. As I told
3 you at the start of this case, and as you agreed, it is your
4 duty to accept my instructions of law and to apply them to the
5 facts as you determine them.

6 Regardless of any opinion that you may have as to what
7 the law may be or ought to be, it is your duty to follow the
8 law as I give it to you. Also, if any attorney or other person
9 has stated a legal principle different from any that I state to
10 you in my instructions, it is my instructions that you must
11 follow.

12 Your duty is to decide the factual issues in this case
13 and arrive at a verdict. You, the members of the jury, are the
14 sole and exclusive judges of the facts. You decide the weight
15 of the evidence; you determine the credibility of the
16 witnesses; you resolve such conflicts as there may be in the
17 testimony; and you draw whatever reasonable inferences you
18 decide to draw from the facts as you determine them.

19 In determining the facts, you must rely upon your own
20 recollection of the evidence. None of what the lawyers have
21 said in their opening or closing arguments, their questions or
22 their objections is evidence. They are not sworn as witnesses;
23 they do not testify; they make arguments about what conclusions
24 you should draw from evidence or lack of it. But as I said,
25 that is argumentation; not evidence. And the same applies to

G9LQROD2

Charge

1 me: Anything I may have said is not evidence. I've allowed
2 you to take notes. As I said earlier, your notes are not
3 evidence.

4 The evidence before you consists of just two things:
5 The testimony given by the witnesses from the stand right here
6 that was received in evidence, and the exhibits that were
7 received in evidence.

8 Testimony consists of the answers that were given by
9 the witnesses to the questions that were permitted. The
10 questions themselves are not evidence. It is the answers to
11 the questions that count. Also, as I have instructed you at
12 the beginning of the case, and I am sure you have complied with
13 my instruction, anything you may have seen or heard about this
14 case outside the courtroom is not evidence and must be entirely
15 disregarded.

16 Now, it is the duty of the attorney for each party to
17 object when the other party offers testimony or other evidence
18 that the attorney believes is not properly admissible. Counsel
19 also have the right and duty to ask the Court to make rulings
20 of law and to request conferences out of the hearing of the
21 jury. Those questions of law have to be decided by me. You
22 should not show any prejudice against any attorney or party
23 because the attorney objected to the admissibility of evidence
24 or asked for a conference out of your hearing or asked me for a
25 ruling on the law.

G9LQROD2

Charge

1 I am instructing you now that the testimony and
2 documents that have been admitted into evidence are appropriate
3 for your consideration. You may consider all the evidence that
4 has been admitted.

5 I also ask you to draw no inference from my rulings or
6 from the fact that upon occasion I asked a question of certain
7 witnesses. My rulings were no more than the application of law
8 and my questions were only intended for clarification or to
9 expedite matters. You are to expressly understand that I have
10 no opinion as to the verdict you should render in this case.
11 Your verdict is strictly up to you.

12 You are to perform your duty of finding the facts
13 without bias or prejudice as to any party. You are to perform
14 your duty with an attitude of complete fairness and
15 impartiality. This case is important to both parties.
16 Mr. Rodriguez is charged with a serious crime. He has pleaded
17 not guilty. It is important to the government too.
18 Enforcement of our criminal laws with regard to guns and drugs
19 are a prime concern to the government.

20 The fact that the prosecution is brought in the name
21 of the United States of America entitles the government to no
22 greater consideration than accorded to any other party. By the
23 same token, the government is entitled to no less
24 consideration. All parties, whether the government or
25 individuals, stand as equals before the Court.

G9LQROD2

Charge

1 It would be improper for you to consider, in reaching
2 your decision as to whether the government has sustained its
3 burden of proof, any personal feelings you may have about
4 Mr. Rodriguez's race, religion, national origin, gender, sexual
5 orientation or age. Similarly, it would be improper for you to
6 consider any personal feelings you may have about the race,
7 religion, national origin, gender, sexual orientation or age of
8 any other witness or anyone else involved in this case. Every
9 defendant is entitled to the presumption of innocence and the
10 government has the burden of proof, as I will discuss in more
11 detail in a moment. It would be equally improper for you to
12 allow any feelings you might have about the nature of the crime
13 charged to interfere with your decision-making process.

14 You are not to be swayed in any way by sympathy.
15 Rather, the crucial question that you must ask yourselves as
16 you review the evidence is: Has the government proved the
17 guilt of Mr. Rodriguez beyond a reasonable doubt?

18 It must be clear to you by now that if you were to let
19 biases, prejudice, fear, disgust, sympathy or any other
20 irrelevant consideration interfere with your thinking, there
21 would be a risk that you would not arrive at a true and just
22 verdict. So do not be guided by anything except clear thinking
23 and calm analysis of the evidence. Sympathy should play no
24 role in your deliberations.

25 You should not consider any personal feelings you may

G9LQROD2

Charge

1 have about the attorneys who represented the parties in this
2 matter. As I indicated at the beginning of this trial, the
3 lawyers and the other participants at counsel table have been
4 instructed not to have any communication with you as jurors.
5 If due to the congestion in the courthouse you ran into counsel
6 and they ignored you, they did so because that's what they're
7 supposed to do. That's the rule. This should not influence
8 your decisions regarding Mr. Rodriguez's guilt or innocence in
9 any way.

10 The question of Mr. Rodriguez's potential punishment
11 is of no concern to the jury and should not in any sense enter
12 into or influence your deliberations. The duty of imposing a
13 sentence rests exclusively with the Court. Your function is to
14 weigh the evidence, or lack of it, in the case and to determine
15 whether or not the government has proven Mr. Rodriguez's guilt
16 beyond a reasonable doubt.

17 Now, as everybody has told you, the defendant,
18 Mr. Rodriguez, has been formally charged in an indictment.
19 Under our rules, he is entitled to know what the charges are
20 against him. But as I instructed you when the trial started,
21 the indictment is not evidence. It merely describes the
22 charges against Mr. Rodriguez, and may not be considered by you
23 as evidence of guilt. You are to give no weight to the fact
24 that a grand jury returned an indictment against Mr. Rodriguez.

25 I will not read the entire indictment to you at this

G9LQROD2

Charge

1 time, but I will summarize the offenses charged. I will then
2 explain in detail the elements of the charged offenses. But
3 before you begin your deliberations, you will be provided with
4 a copy of the indictment.

5 So far I promised you a copy of the charges and a copy
6 of the indictment, which you will take into the jury room.

7 Now, the law presumes that Mr. Rodriguez is innocent
8 until proven guilty beyond a reasonable doubt. Mr. Rodriguez
9 has entered a plea of not guilty to the charge alleged in the
10 indictment. As a result, the government has the burden to
11 prove Mr. Rodriguez's guilt beyond a reasonable doubt. The
12 burden never shifts to Mr. Rodriguez for the simple reason that
13 the law presumes him innocent and never imposes upon any
14 defendant in a criminal case the burden or duty of calling any
15 witness or producing any evidence.

16 In other words, Mr. Rodriguez starts with a clean
17 slate. He is presumed innocent until such time that you, the
18 jury, are unanimously satisfied that the government has proved
19 Mr. Rodriguez guilty beyond a reasonable doubt. If the
20 government fails to sustain this burden with respect to
21 Mr. Rodriguez, you must find him not guilty.

22 I have said that the government must prove
23 Mr. Rodriguez is guilty beyond a reasonable doubt, and that
24 burden never shifts to Mr. Rodriguez. Instead, it is always
25 the government's burden to prove beyond a reasonable doubt each

G9LQROD2

Charge

1 of the elements of the crime charged. Mr. Rodriguez has no
2 burden to prove himself innocent.

3 The question then is: What is a reasonable doubt?
4 Well, the words almost define themselves. It is a doubt based
5 on reason. It is a doubt that a reasonable person has after
6 carefully weighing all of the evidence. Proof beyond a
7 reasonable doubt must, therefore, be proof of such a convincing
8 character that a reasonable person would not hesitate to rely
9 and act upon it in the most important of his or her own
10 affairs.

11 A reasonable doubt is not a guess. It's not a whim.
12 It's not speculation. It's not suspicion. It is not an excuse
13 to avoid the performance of an unpleasant duty, and it is
14 certainly not sympathy. The law does not require that the
15 government prove guilt beyond all possible doubt. Proof beyond
16 a reasonable doubt is sufficient to convict.

17 If, after fair and impartial consideration of all the
18 evidence, you have a reasonable doubt as to the guilt of
19 Mr. Rodriguez, it is your duty to find him not guilty. On the
20 other hand, if after a fair and impartial consideration of all
21 of the evidence you are satisfied that the government has met
22 its burden of proving Mr. Rodriguez's guilt beyond a reasonable
23 doubt, it is your duty to find him guilty.

24 Now, a few instructions about the evidence. In
25 deciding whether Mr. Rodriguez is guilty or not guilty, you may

G9LQROD2

Charge

1 consider both direct evidence and circumstantial evidence.

2 Direct evidence is evidence that proves a disputed
3 fact directly. For example, where a witness testifies as to
4 what he or she saw, heard, or observed, that is called direct
5 evidence.

6 Circumstantial evidence is evidence that tends to
7 prove a disputed fact by proof of other facts. Let me give you
8 a simple example. Suppose that when you came into the
9 courthouse today, the sun was shining, and it was a nice day,
10 but now the courtroom blinds are drawn and you cannot look
11 outside. And as you are sitting here, someone walks in the
12 back of the courtroom with a dripping wet umbrella, and soon
13 after that someone else walks in with a dripping wet raincoat.
14 Noun, on our assumed facts, you can't look outside of the
15 courtroom and see whether it's raining. So you have no direct
16 evidence of that fact. But on the combination of the facts
17 about the umbrella and the raincoat, it would be reasonable for
18 you to conclude that it had started to rain. That is all there
19 is to circumstantial evidence. Using your reason and
20 experience, you infer from established facts the existence or
21 the non-existence of some other fact.

22 An inference is the deduction or conclusion that
23 reason and common sense prompts a reasonable mind to draw from
24 the facts that have been proven by the evidence. Not all
25 logically possible conclusions are legitimate or fair

G9LQROD2

Charge

1 inferences. Only those inferences to which the mind is
2 reasonably led or directed are fair inferences from direct or
3 circumstantial evidence in this case. Whether or not to draw a
4 particular inference is, of course, a matter exclusively for
5 you to decide, as are all determinations of fact.

6 Many material facts, such as state of mind, are rarely
7 susceptible of proof by direct evidence. Generally, such facts
8 are established by circumstantial evidence and the inferences
9 the jury draws from them. The law makes no distinction between
10 direct and circumstantial evidence. Circumstantial evidence is
11 of no less value than direct evidence, and you can consider
12 either or both and can give them each such weight as you
13 conclude is warranted.

14 Now, it must be clear to you by now that counsel for
15 both of the parties are asking you to draw very different
16 conclusions about the significant factual issues in this case.
17 An important part of your decision will involve making
18 judgments about the testimony of witnesses you have listened to
19 and observed. In making these judgments, you should carefully
20 scrutinize all of the testimony of each witness, the
21 circumstances under which each witness testified, and any other
22 matter in evidence that may help you to decide the truth and
23 the importance of each witness's testimony. For example, was
24 the testimony of a witness corroborated by the testimony of
25 other witnesses or another exhibit?

G9LQROD2

Charge

1 Your decision whether or not to believe a witness may
2 depend upon how that witness impressed you. Was the witness
3 candid, frank, and forthright, or was the witness evasive or
4 suspect in some way? How did the way the witness testified on
5 direct examination compare with how the witness testified on
6 cross-examination? Was the witness consistent or
7 contradictory? Did the witness appear to know what he or she
8 was talking about? Did the witness strike you as someone who
9 was trying to report his knowledge or her knowledge accurately?
10 What was the witness's demeanor like? These are examples of
11 the kinds of common sense questions you should ask yourselves
12 in deciding whether a witness is or is not truthful.

13 In addition, you may consider whether a witness had
14 any possible bias or relationship with a party or any possible
15 interest in the outcome of the case. Such a bias, relationship
16 or interest does not necessarily make that witness unworthy of
17 belief. These are simply factors that you can consider.

18 If you find that a witness has testified falsely as to
19 any material fact, you may reject the witness's testimony in
20 its entirety, or you may accept those parts that you believe to
21 be truthful or that are corroborated by other evidence in this
22 case.

23 You should also consider whether the witness had an
24 opportunity to observe the facts he or she testified about, and
25 whether the witness's recollection of the facts stands up in

G9LQROD2

Charge

1 the light of the other evidence in this case.

2 In other words, what you have to try to do in deciding
3 credibility is to size up a person just as you would in any
4 important matter where you are going to decide if a person is
5 truthful, straightforward and accurate in his or her
6 recollection.

7 It is for you, the jury, and for you alone - not the
8 lawyers or witnesses or me - to decide the credibility of
9 witnesses who appeared here and the weight that their testimony
10 deserves. After making your own judgment or assessment
11 concerning the credibility of a witness, you can then attach
12 such importance or weight to their testimony, if any, that you
13 feel that it deserves. You will then be in a position to
14 decide whether the government has proven the charges beyond a
15 reasonable doubt.

16 Now, you have heard the testimony of seven law
17 enforcement officials. The fact that a witness may be employed
18 by the government as a law enforcement official does not mean
19 that his or her testimony is necessarily deserving of more or
20 less consideration or greater or lesser weight than that of an
21 ordinary witness. In this context, defense counsel was allowed
22 to try to attack the credibility of such a witness on the
23 grounds that his or her testimony may be colored by a personal
24 or professional interest in the outcome of the case.

25 But it is your decision after reviewing all of the

G9LQROD2

Charge

1 evidence whether to accept the testimony of the law enforcement
2 witnesses and to give that testimony whatever weight, if any,
3 you find that it deserves.

4 Now, you have heard the testimony of Reginald
5 Donaldson, an expert in cell site data. An expert is someone
6 who by education or experience has acquired learning or
7 experience in a science or a specialized area of knowledge.
8 Such a witness is permitted to give his opinions as to relevant
9 matters in which he professes to be expert and give his reasons
10 for his opinions. Expert testimony is presented to you on the
11 theory that someone who is experienced in the field can assist
12 you in understanding the evidence or in reaching an independent
13 decision on the facts.

14 Your role in judging credibility applies to experts as
15 well as to other witnesses. You should consider the expert
16 opinions that were received in evidence in this case or, I
17 should say, expert opinion that was received in evidence in
18 this case, and give it as much or as little weight as you think
19 it deserves. If you should decide that the opinion of an
20 expert was not based on sufficient education or experience or
21 on sufficient data or if you should conclude that the
22 trustworthiness or credibility of an expert is questionable for
23 any reason or if the opinion of the expert was outweighed in
24 your judgment by other evidence in this case, then you may
25 disregard the opinion of the expert entirely or in part.

G9LQROD2

Charge

1 On the other hand, if you find that the opinion of the
2 expert was based on sufficient evidence, data and experience,
3 and the other evidence does not give you reason to doubt his
4 conclusions, you would be justified in placing greater reliance
5 on his testimony.

6 Now, Mr. Donaldson also used charts and summaries
7 during his testimony in order to make the other evidence more
8 meaningful and to aid you in considering this evidence. Those
9 charts and evidence are not direct independent evidence; they
10 are summaries of other evidence. They are admitted into
11 evidence as aids to you.

12 In understanding the evidence which you have heard, it
13 is clearly easier and more convenient to utilize summary charts
14 than to place all of the relevant documents in front of you.
15 It is for you to decide whether the charts and summaries
16 correctly present the information contained in the testimony
17 and in the exhibits on which they are based. To the extent
18 that the charts conform to what you determine the underlying
19 evidence to be, you may consider them if you find that they are
20 of assistance to you in analyzing and understanding the
21 evidence.

22 Now, some of the people who may have been involved in
23 the events leading to this trial are not on trial here. This
24 does not matter. There is no requirement that all members of a
25 conspiracy be charged and prosecuted or tried together in the

G9LQROD2

Charge

1 same proceeding.

2 You cannot draw any inference, favorable or
3 unfavorable, towards the government or the defendant from the
4 fact that certain persons other than defendant were not named
5 as defendants in the indictment, nor may you speculate as to
6 the reason why other persons are not on trial. These matters
7 are wholly outside of your concern and have no bearing on your
8 function as jurors.

9 Whether a person should be named as a co-conspirator
10 or indicted as a defendant in this case or another separate
11 case is a matter within the sole discretion of the United
12 States and the grand jury. Therefore, you may not consider it
13 in any way in reaching your verdict as to the defendant.

14 Now, as you know, Mr. Rodriguez did not testify in
15 this case. Under our Constitution, a defendant has no
16 obligation whatsoever to testify or to present any evidence
17 because it is the government's burden to prove guilt beyond a
18 reasonable doubt.

19 (Continued on next page)
20
21
22
23
24
25

G9LVROD3

1 THE COURT: That burden remains with the government
2 throughout the entire trial and never shifts to a defendant.
3 The defendant is never required to prove he or she is innocent.
4 You must not attach any significance to the fact that
5 Mr. Rodriguez did not testify. No adverse inference against
6 Mr. Rodriguez may be drawn by you because he did not take the
7 witness stand. You may not consider this against Mr. Rodriguez
8 in any way in your deliberations in the jury room.

9 Now, there are several people whose names you have
10 heard during the course of the trial but who did not appear
11 here to testify. I instruct you that each party had an equal
12 opportunity or lack of opportunity to call any of those
13 witnesses. Therefore, you should not draw any inference or
14 reach any conclusion as to what they would have testified to
15 had they been called. Their absence should not affect your
16 judgment in any way. You should, however, remember my
17 instructions that the law does not impose on a defendant in a
18 criminal case the burden or duty of calling any witness or
19 producing any evidence. The burden remains with the government
20 to prove the guilt of the defendant beyond a reasonable doubt.

21 This is an instruction that I give because sometimes
22 people get notions of how the government ought to prove its
23 case based on what they see on various crime shows.

24 There's been references in the arguments of defense
25 counsel in this case to the fact that certain investigative

G9LVROD3

1 techniques were not used by the government. The issue is not
2 whether the best or most scientifically-advanced method of
3 proof is used for a particular fact, but whether the method of
4 proof selected establishes the fact beyond a reasonable doubt.
5 There is no legal requirement that the government prove its
6 case through any particular means.

7 You should carefully consider the evidence adduced by
8 the government. You are not to speculate as to why they used
9 the techniques they did or why they did not use other
10 techniques. The government is not on trial. Law enforcement
11 techniques are not your concern. Your concern is to determine
12 whether or not on the evidence or lack of evidence the guilt of
13 the defendant has been proved beyond a reasonable doubt.

14 Now, you've heard testimony about evidence seized in
15 connection with certain searches conducted pursuant to search
16 warrants by law enforcement officers. Evidence obtained from
17 these searches was properly admitted in this case and may be
18 properly considered by you. Whether you approve or disapprove
19 of how the evidence was obtained should not enter into your
20 deliberations because I instruct you that the government's use
21 of the evidence is entirely lawful. Regardless of your
22 personal opinions, you must give this evidence full
23 consideration, along with all the other evidence in this case,
24 in determining whether or not the government has proved the
25 guilt of Mr. Rodriguez beyond a reasonable doubt.

G9LVROD3

1 While Mr. Rodriguez did not testify, he made
2 statements. There has been evidence that Mr. Rodriguez made
3 statements to law enforcement authorities. Evidence of these
4 statements was properly admitted in this case and you can
5 properly consider it. You are to give the evidence of those
6 statements such weight as you feel it deserves in light of all
7 the evidence. Whether you approve or disapprove the use of
8 these statements may not enter into your deliberations. I
9 instruct you that no one's rights were violated, and the
10 government's use of this evidence is entirely lawful.

11 You've heard testimony about cell phone location
12 information obtained from the cell phone service provider
13 pursuant to a court order. The evidence was properly admitted
14 in this case and may be properly considered by you. The
15 acquisition of this evidence was an entirely appropriate law
16 enforcement action. Whether you approve or disapprove how the
17 evidence was obtained should not enter into your deliberations,
18 because I instruct you that the government's use of the
19 evidence is entirely lawful. You must, therefore, regardless
20 of your personal opinions, give this evidence your full
21 consideration, along with all the other evidence in this case,
22 in determining whether the defendant has proved the defendant's
23 guilt beyond a reasonable doubt.

24 Some of the evidence in this case has consisted of
25 electronic communications seized from computers or electronic

G9LVROD3

1 accounts. There is nothing illegal about the government's use
2 of such electronic communications in this case, and you may
3 consider them along with all the other evidence in this case.
4 Whether you approve or disapprove of the seizure of these
5 communications may not enter your deliberations. You must,
6 therefore, regardless of any personal opinions, consider this
7 evidence, along with all the other evidence in this case, in
8 determining whether the government has proved beyond a
9 reasonable doubt the guilt of the defendant. However, as with
10 other evidence, it is for you to determine what weight, if any,
11 to give such evidence.

12 Audio recordings of conversations have been admitted
13 into evidence. Whether you approve or disapprove of the
14 recordings or interception of those conversations cannot enter
15 your deliberations. I instruct you that these recordings were
16 made in a lawful manner and that no one's rights were violated.
17 The government's use of this evidence is entirely lawful. You
18 must, therefore, regardless of any personal opinions, give this
19 evidence full consideration, along with all the other evidence
20 in this case, in determining whether the government has proved
21 beyond a reasonable doubt the guilt of the defendant that you
22 are considering.

23 You have heard evidence in the form of stipulations of
24 testimony. A stipulation is in the 1200 series. A stipulation
25 of testimony is an agreement among the parties that if called

G9LVROD3

1 as a witness, the person would give certain testimony. You
2 must accept as true the fact that a witness would have given
3 that testimony, but it is for you to determine the effect to be
4 given that testimony.

5 You've also heard evidence in the form of a
6 stipulation of fact. A stipulation of fact is an agreement
7 among the parties that a certain fact is true. You must regard
8 such agreed facts as true. It is for you, however, to
9 determine the effect to be given to any stipulated fact.

10 We have among the exhibits received in evidence some
11 documents that are redacted. "Redacted" means that part of the
12 document was blacked out. You are to concern yourself only
13 with the part of the item that has been admitted into evidence.
14 You should not consider any possible reason why the other part
15 of the document has been deleted.

16 That takes care of some of the guidance I want to give
17 you on evidence.

18 We will now turn to the substantive law and an
19 explanation of the indictment.

20 As I explained to you before, the indictment is simply
21 a charge or an accusation; it is not evidence. I will
22 summarize the counts that are charged in the indictment and
23 then I will explain in detail the elements of each charged
24 crime.

25 The indictment contains two counts. Each count is a

G9LVROD3

1 separate offense or crime. Each count must, therefore, be
2 considered separately by you and you must return a separate
3 verdict on each count.

4 Count One charges Mr. Rodriguez conspired with
5 others -- that is, he agreed with others -- in or about August
6 2015 to distribute marijuana and to possess marijuana with
7 intent to distribute it.

8 Count Two charges that on or about August 21st of
9 2015, Mr. Rodriguez, during and in relation to the narcotics
10 trafficking conspiracy charged in Count One, knowingly used and
11 carried a firearm and, in furtherance of such crime, did
12 possess a firearm and aided and abetted the use, carrying, and
13 possession of a firearm.

14 You will note that the indictment alleges that certain
15 acts occurred on or about various dates. I instruct you that
16 it does not matter if a specific event is alleged to have
17 occurred on or about a certain date or month, but the testimony
18 indicates that, in fact, it was a different date or month. The
19 law requires only a substantial similarity between the dates
20 and months alleged in the indictment and the dates and months
21 established by the evidence.

22 Let's take a look at Count One.

23 Mr. Rodriguez is accused in Count One of having been a
24 member of a conspiracy to violate federal law. I'll read Count
25 One. You'll have the indictment in the jury room as well.

G9LVROD3

1 In or about August 2015, in the Southern District of
2 New York and elsewhere, Michael Earl Rodriguez, the defendant,
3 together with others known and unknown, intentionally and
4 knowingly did combine, conspire, confederate, and agree,
5 together and with each other, to violate the narcotics laws of
6 the United States. It was a part and an object of the
7 conspiracy that Michael Earl Rodriguez, the defendant, and
8 others known and unknown, would and did distribute and possess
9 with the intent to distribute a controlled substance, in
10 violation of Title 21, United States Code, Section 841(a)(1).

11 The controlled substance that Michael Earl Rodriguez,
12 the defendant, conspired to distribute and possess with intent
13 to distribute was marijuana, in violation of Title 21, United
14 States Code, Section 841(b)(1)(D).

15 Now, what's a conspiracy? A conspiracy is kind of a
16 criminal partnership; a combination or agreement of two or more
17 persons to join together to accomplish an unlawful purpose.
18 The crime of conspiracy to violate a federal law is an
19 independent offense; it is separate and distinct from the
20 actual violation of any specific federal laws which the law
21 refers to as substantive crimes.

22 Given that a conspiracy and a substantive crime are
23 distinct and independent offenses, you may find the defendant
24 guilty of the crime of conspiracy, even if you find that he
25 never actually committed the substantive crime that was the

G9LVROD3

1 object of the conspiracy. In other words, you may find the
2 defendant guilty of the crime of conspiracy to distribute a
3 controlled substance or to possess a controlled substance with
4 intent to distribute, that is, agreeing to distribute or
5 possess with intent to distribute a controlled substance, even
6 if there's no actual distribution or possession with the intent
7 to distribute a controlled substance.

8 Under our law, conspiracy standing alone is a separate
9 crime, even if the conspiracy is not successful and no drugs
10 are actually distributed or possessed with intent to
11 distribute.

12 To sustain its burden of proof with respect to the
13 conspiracy, the government must establish two elements beyond a
14 reasonable doubt:

15 First, the existence of the conspiracy charged in
16 Count One of the indictment; in other words, that there was, in
17 fact, an agreement or understanding to violate those provisions
18 of the law that make it illegal to distribute narcotics or
19 possess narcotics with the intent to distribute them.

20 Second, the government must prove beyond a reasonable
21 doubt that the defendant knowingly became a member of the
22 conspiracy charged, that is, he knowingly associated himself
23 with the conspiracy and participated in the conspiracy to
24 distribute or possess with intent to distribute narcotics.

25 Now I will describe the two elements.

G9LVROD3

1 The first element is the existence of the conspiracy.
2 Starting with the first element, a conspiracy is a combination
3 or agreement or understanding of two or more people to
4 accomplish by a concerted or collective action a criminal or
5 unlawful purpose.

6 In this instance, the unlawful purpose alleged to have
7 been the object of the conspiracy charged in Count One is the
8 distribution of a controlled substance with the possession and
9 intent to distribute it. The gist or the essence of the crime
10 or conspiracy is the unlawful combination or agreement to
11 violate the law. The success of the conspiracy or actual
12 commission of the criminal act which is the object of the
13 conspiracy is not an element for the crime of conspiracy. The
14 conspiracy alleged here, therefore, is the agreement to commit
15 the crime. That is an entirely separate and distinct offense
16 from the underlying crime which the law calls the substantive
17 crime. The crime of conspiracy is complete once the unlawful
18 agreement is made and the defendant enters into it.

19 Accordingly, you may find a defendant guilty of the
20 crime of conspiracy to distribute or possess with intent to
21 distribute marijuana, even though the object of the
22 conspiracy -- that is, the actual possession or distribution of
23 marijuana -- might not actually have been committed. The
24 ultimate success of the conspiracy is not required.

25 To prove a conspiracy, the government is not required

G9LVROD3

1 to show that the individuals sat around a table and entered a
2 solemn pact orally or in writing stating that they had formed a
3 conspiracy to violate the law and setting forth the details of
4 the plans and the means by which the unlawful project is to be
5 carried out or the part to be played by each conspirator.
6 Indeed, it would be extraordinary if there were such a formal
7 document or specific oral agreement.

8 Your common sense tells you that when people, in fact,
9 undertake to enter into a criminal conspiracy, a great deal is
10 left to unexpressed understanding. From its very nature, a
11 conspiracy is almost invariably secret in its origin and
12 execution. Conspirators do not usually reduce their agreements
13 to writing or acknowledge them in front of a notary public, nor
14 do they publicly broadcast their plans; thus, you may infer the
15 existence of a conspiracy from the circumstances of the case
16 and the conduct of the parties involved.

17 To show that a conspiracy existed then, it is
18 sufficient if the evidence shows that two or more persons in
19 some way or manner, through any contrivance, explicit or
20 implicit, came to an understanding to violate the law and to
21 establish an unlawful plan. Express language or specific words
22 are not required to indicate assent or attachment to a
23 conspiracy.

24 In determining whether there has been an unlawful
25 agreement, you may consider the acts of the conduct of the

G9LVROD3

1 alleged co-conspirators which were done to carry out the
2 apparent criminal purpose. The adage "actions speak louder
3 than words" is applicable here. Often, the only evidence
4 available with respect to the existence of a conspiracy is that
5 of disconnected acts on the part of the alleged individual
6 co-conspirators. When taken together and considered as a
7 whole, however, these acts are capable of showing a conspiracy
8 or agreement as conclusively as would more direct proof.

9 Of course, proof concerning the accomplishment of the
10 objects of the conspiracy may be the most persuasive evidence
11 of the existence of the conspiracy itself. But it is not
12 necessary that the conspiracy actually succeed in its purpose
13 in order for you to conclude that the conspiracy existed.

14 In deciding whether the alleged conspiracy, in fact,
15 existed, you can consider all the facts, conduct, declarations
16 of the alleged co-conspirators, and the reasonable inferences
17 to be drawn from such evidence.

18 It is sufficient to establish the existence of the
19 conspiracy if, after considering all the relevant evidence, you
20 find beyond a reasonable doubt that the minds of at least two
21 alleged co-conspirators met in an understanding way, and that
22 they agreed, as I have explained, to work together in
23 furtherance of the unlawful scheme alleged in the indictment.

24 In short, as far as the first element of the
25 conspiracy is concerned, the government has to prove beyond a

G9LVROD3

1 reasonable doubt that at least two alleged co-conspirators came
2 to a mutual understanding -- either spoken or unspoken -- to
3 violate the law in the manner charged in the indictment.

4 The object of a conspiracy is the illegal goal that
5 the co-conspirators agree or hope to achieve.

6 Count One of the indictment charges that the objective
7 of the conspiracy charged in that count was the distribution or
8 possession with intent to distribute a controlled substance,
9 here, marijuana. I will define the terms "distribution" and
10 "possession" for you in just a moment. As I will explain in
11 more detail in a few moments, "to distribute" means simply to
12 transfer to another; it does not require a sale. "Possession
13 with intent to distribute" simply means possession of a
14 controlled substance with the intention or purpose to
15 distribute it to another person or persons.

16 Let me note that the government need prove only that
17 the defendant conspired to distribute the controlled substance
18 or that he conspired to possess the controlled substance with
19 intent to distribute it. The government does not need to prove
20 both.

21 Before I go further, let me note something regarding
22 the quantity and the purity of the drugs involved.

23 I instruct you that the actual quantity and purity of
24 the controlled substance involved in the conspiracy charged in
25 Count One is not an element of this crime, so you need not be

G9LVROD3

1 concerned with quantity or purity in determining whether the
2 defendant is guilty or not guilty of the crime charged in Count
3 One. You need only find beyond a reasonable doubt that a
4 conspiracy existed to distribute or possess with intent to
5 distribute some amount of a controlled substance.

6 Now, I've used the terms "distribution" and
7 "possession with intent to distribute." What do those terms
8 mean?

9 Let's start with "distribution."

10 The word "distribution" means the actual constructive
11 or attempted transfer of a controlled substance. To distribute
12 simply means to deliver or to pass on, to hand over something
13 to another person or to cause it to be delivered, passed on, or
14 handed over to another. Distribution does not require a sale,
15 but it includes sales.

16 What does "possession with intent to distribute" mean?

17 Let's start with "possession."

18 The legal concept of "possession" differs from the
19 everyday usage of the term, so let me explain it to you in some
20 detail.

21 Actual possession is what most of us think of as
22 possession; that is, having physical custody or control of an
23 object, as in I possess this pen I'm holding in my hand. I
24 possess this pen. However, a person need not have actual
25 physical possession, that is, physical custody of an object in

G9LVROD3

1 order to be in legal possession of it. If an individual has
2 the ability to exercise substantial control over an object that
3 he does not have in his physical custody, and the intent to
4 exercise such control, then he is in possession of the article.
5 This is called constructive possession.

6 Control over an object may be demonstrated by the
7 existence of a working relationship between the person having
8 such control and the person with actual physical custody. The
9 person having control over an object possesses it because he
10 has the effective working relationship with the person who has
11 actual physical custody of it because he can direct the
12 movement or transfer or disposition of the object. In this
13 manner, for example, a person may legally possess things that
14 are in his house or car even though he's not in the house or
15 car at the time he is said to possess them.

16 More than one person can have control over the same
17 narcotics. The law recognizes that possession can be sole or
18 joint. If one person alone has actual or constructive
19 possession of a thing, then possession is sole. If more than
20 one person has possession of it as I have defined "possession"
21 for you, then possession is joint. That is what is meant by
22 "possession."

23 Now, if you find that a person knowingly possessed a
24 controlled substance, then you must decide whether the person
25 intended to distribute it. "Possession with intent to

G9LVROD3

1 distribute" means that a person possessed the controlled
2 substance with the intention or purpose to distribute it to
3 another person or persons. As I explained to you, "distribute"
4 means simply to transfer to another.

5 We cannot read a person's mind, so the determination
6 as to what the defendant's intent is is inferred from his
7 behavior. However, you may not convict the defendant unless
8 these inferences convince you beyond a reasonable doubt that
9 the defendant intended to distribute narcotics.

10 Basically, the question with regard to the intent
11 aspect of the underlying offense is whether any drugs in the
12 defendant's possession that is subject to his control in the
13 manner I have indicated were for his personal use or for the
14 purpose of distribution or delivery to another. It is
15 impossible to make this determination from the quantity of
16 drugs found in the defendant's possession. Possession of a
17 large quantity of narcotics does not necessarily mean that the
18 defendant intended to distribute them. On the other hand, an
19 individual may have intended to distribute a controlled
20 substance even if he did not possess a large quantity of it.
21 Other physical evidence, such as paraphernalia for the
22 packaging and processing of drugs, may show an intent to
23 distribute. You should make your decision based on all the
24 evidence presented.

25 The government must prove that the objective of the

G9LVROD3

1 conspiracy was either to distribute the controlled substance or
2 to possess the controlled substance with the intent to
3 distribute it. The government need not prove both. But you
4 must be unanimous, however, as to which act was proven beyond a
5 reasonable doubt to have been the object of the conspiracy.

6 The second element is membership.

7 First is did the conspiracy exist; did it have an
8 unlawful purpose.

9 If you conclude that the government has proven beyond
10 a reasonable doubt that the conspiracy charged in Count One
11 existed, you have to go on to the next question: Did the
12 defendant participate in the conspiracy with knowledge of its
13 unlawful purpose and in furtherance of its unlawful objectives.
14 As you can see, this element concerns the defendant's state of
15 mind. Direct proof of state of mind is not always available
16 and is not required.

17 The terms "unlawfully," "intentionally," and
18 "knowingly" are intended to ensure that if you find that the
19 defendant did join the conspiracy, you also conclude beyond a
20 reasonable doubt that, in doing so, he knew what he was doing;
21 in other words, that he took the actions in question
22 deliberately and voluntarily.

23 "Unlawfully" simply means contrary to the law. The
24 defendant need not have known he was breaking any particular
25 law, but he must have been aware of the generally unlawful

G9LVROD3

1 nature of his acts.

2 Now, science has not yet devised a manner of looking
3 into a person's mind and knowing what that person is thinking.
4 However, you do have before you the evidence of certain acts
5 and conversations alleged to have been taken place with the
6 defendant or in his presence. The government contends that
7 these acts and conversations show beyond a reasonable doubt the
8 defendant's knowledge of the unlawfulness of his actions. By
9 pleading not guilty, the defendant denies he committed the
10 charged offense. It is for you to determine whether the
11 government has established to your satisfaction beyond a
12 reasonable doubt that such knowledge and intent on the part of
13 the defendant existed.

14 An act is done knowingly and intentionally if it is
15 done deliberately and purposely; that is, the defendant's acts
16 must have been the product of that defendant's conscious
17 objective rather than the product of mistake or accident, mere
18 negligence or some other innocent reason.

19 The ultimate facts of knowledge and criminal intent,
20 though subjective, may be established by circumstantial
21 evidence based on a person's outward manifestations, words,
22 conduct, and all the surrounding circumstances disclosed by the
23 evidence and the rational or logical inferences that may be
24 drawn therefrom.

25 By pleading not guilty, Mr. Rodriguez denies that he

G9LVROD3

1 was a member of this conspiracy. It is for you to determine
2 whether the government has established to your satisfaction and
3 beyond a reasonable doubt that such knowledge and intent on the
4 part of the defendant existed. It is not necessary that the
5 defendant be fully informed as to all the details of the
6 conspiracy to justify an inference of knowledge on his part.

7 To have guilty knowledge, a defendant need not have
8 known the full extent of the conspiracy or all of its
9 objectives or all of its participants. It is not even
10 necessary that the defendant know every other member of the
11 conspiracy. In fact, the defendant may know only one other
12 member of the conspiracy and still be charged as a
13 co-conspirator. Nor is it necessary that the defendant receive
14 any monetary benefit from participating in the conspiracy or
15 have a financial stake in the outcome, so long as he, in fact,
16 participated in the conspiracy in the manner I have explained.

17 When people enter into a conspiracy to accomplish an
18 unlawful end, they become agents or partners of one another in
19 carrying out the conspiracy. In determining the factual issues
20 before you, you may consider against the defendant any acts or
21 statements made by any of the people that you find under the
22 standards I have already described to have been his
23 co-conspirators, even though such acts or statements were not
24 made in his presence or were made without his knowledge.

25 When I give you the verdict sheet, if and only if you

G9LVROD3

1 find that the government has proved beyond a reasonable doubt
2 that the defendant is guilty of participating in the conspiracy
3 charged in Count One of the indictment, you must then determine
4 the type of controlled substance involved in the conspiracy.

5 The government has alleged that the marijuana was the
6 controlled substance involved in the conspiracy. The
7 government need not prove the quality or purity of marijuana;
8 however, any mixture or substance containing a detectable
9 amount of marijuana is sufficient. If you conclude unanimously
10 that the government has failed to prove beyond a reasonable
11 doubt the conspiracy alleged in Count One of the indictment
12 involved marijuana -- let me start again. If you conclude
13 unanimously that the government failed to prove beyond a
14 reasonable doubt that the conspiracy alleged in Count One of
15 the indictment involved marijuana, check "no" in response to
16 that question on the verdict form. If, on the other hand, you
17 conclude unanimously that the government has proved beyond a
18 reasonable doubt that the conspiracy alleged in Count One
19 involved marijuana, check "yes" in response to that question on
20 the verdict form.

21 In making your determination about the type of any
22 controlled substance involved in the conspiracy charged in
23 Count One of the indictment, you should include whatever type
24 of controlled substance was involved in any of the acts in
25 which the defendant personally or directly participated.

G9LVROD3

1 In making your determination about the type of
2 controlled substance involved in an offense, you should also
3 include any controlled substances associated with any
4 co-conspirators of the defendant, as long as the type was
5 either known to the defendant or reasonably foreseeable to him
6 within the scope of criminal activity that he jointly
7 undertook.

8 That concludes my instructions on Count One.

9 With regard to Count Two, the firearms offense, I want
10 to turn now to the firearms offense charged in Count Two of the
11 indictment and instruct you on the elements of that offense.

12 Count Two alleges a violation of Section 924(c) of the
13 Federal Criminal Code. That provision makes it a crime for any
14 person, during and in relation to any drug trafficking crime,
15 to use or carry a firearm or, in furtherance of any such crime,
16 to possess a firearm.

17 Count Two is a firearms count connected to the
18 narcotics conspiracy charged in Count One, and it charges
19 Mr. Rodriguez as follows:

20 On or about August 21, 2015, in the Southern District
21 of New York and elsewhere, Michael Earl Rodriguez, the
22 defendant, during and in relation to a drug trafficking crime
23 for which he may be prosecuted in a court of the United States,
24 namely, the conspiracy to distribute and possess with the
25 intent to distribute marijuana charged in Count One of this

G9LVROD3

1 indictment, knowingly did use and carry a firearm and, in
2 furtherance of such crime, did possess a firearm and did aid
3 and abet the use, carrying, and possession of a firearm, to
4 wit, a Beretta .22 caliber semiautomatic pistol.

5 In order to convict the defendant of Count Two, the
6 government must prove the following elements beyond a
7 reasonable doubt:

8 One. On or about the date alleged in the indictment,
9 the defendant used or carried or possessed a firearm or any
10 combination of those acts.

11 Two. The defendant used or carried the firearm during
12 and in relation to the specified drug trafficking conspiracy,
13 or that the defendant possessed a firearm in furtherance of the
14 specified drug trafficking conspiracy.

15 Third. The defendant acted knowingly.

16 The first element the government must prove beyond a
17 reasonable doubt is that the defendant committed a drug
18 trafficking crime for which he can be prosecuted by a court in
19 the United States. The defendant is charged in Count One of
20 the indictment with the distribution and with the possession,
21 with intent to distribute, a controlled substance. I instruct
22 you that the crime charged in Count One of the indictment is a
23 drug trafficking crime for which someone can be prosecuted by a
24 court in the United States. It is up to you to determine,
25 however, that the government has proven beyond a reasonable

G9LVROD3

1 doubt that the defendant committed the crime charged in Count
2 One.

3 If you find the defendant not guilty as to Count One,
4 you must find the defendant not guilty as to Count Two and you
5 should check "not guilty" in response to Count Two on the
6 verdict form. On the other hand, if you find the defendant
7 guilty as to Count One, you have to consider Count Two
8 separately to determine whether the defendant is guilty or not
9 guilty of Count Two.

10 The second element the government must prove beyond a
11 reasonable doubt for Count Two is that the defendant either
12 carried a firearm during and in relation to the drug
13 trafficking crime charged in Count One, or that he possessed a
14 firearm in furtherance of that drug trafficking crime. The
15 government must prove either one of these two things beyond a
16 reasonable doubt, that the defendant carried a firearm during
17 and in relation to the drug crime, or that the defendant
18 possessed the firearm in furtherance of that crime. The
19 government does not need to prove both, although the same
20 conduct may constitute both carrying and possession.

21 A firearm under the statute means any weapon which
22 will or is designed to or may readily be converted to expel a
23 projectile by the action of an explosive. In considering the
24 specific element of whether the defendant used or carried or
25 possessed a firearm, it does not matter whether the firearm was

G9LVROD3

1 loaded or operable at the time of the crime. Operability is
2 not relevant to your determination of whether a weapon
3 qualifies as a firearm. I instruct you right now that a gun is
4 a firearm.

5 As I have explained, the government must prove the
6 second element in either one of two ways:

7 First, the government may prove beyond a reasonable
8 doubt that the defendant used or carried a firearm during and
9 in relation to the drug trafficking offense.

10 In order to prove that the defendant used the firearm,
11 the government must prove beyond a reasonable doubt an active
12 employment of the firearm by the defendant during and in
13 relation to the commission of the drug trafficking crime. The
14 defendant does not have to actually fire or attempt to fire the
15 weapon. Brandishing, displaying, or even referring to the
16 weapon so that others present knew that the weapon -- the
17 defendant had the firearm available if needed, all constitute
18 use of the firearm. The mere possession of a firearm at or
19 near the site of the crime without active employment as I just
20 described it is not, however, sufficient to constitute use of a
21 firearm.

22 In order to prove that the defendant carried the
23 firearm, the government must prove beyond a reasonable doubt
24 that the defendant had the weapon within his control so that it
25 was available in such a way that it furthered the commission of

G9LVROD3

1 the crime. The defendant need not have held the firearm
2 physically, that is, have actual possession of it on his
3 person. If you find that the defendant had dominion and
4 control over the place where the firearm was located, and had
5 the power and intention to exercise control over the firearm,
6 and that the firearm was immediately available to him in such a
7 way that it furthered the commission of the drug trafficking
8 offense, you may find that the government has proved that the
9 defendant carried the weapon.

10 A firearm is carried in relation to a drug trafficking
11 offense if the firearm had some purpose or effect with respect
12 to the drug crime. The requirement is satisfied if the firearm
13 facilitated or had the potential to facilitate the drug
14 trafficking offense. On the other hand, this requirement is
15 not satisfied if the carrying of the firearm was entirely
16 unrelated to the drug crime.

17 The government may also establish the second element
18 by proving that the defendant possessed the firearm in
19 furtherance of the drug trafficking crime.

20 Possession of a firearm in furtherance of a drug
21 trafficking crime requires that the defendant possess the
22 firearm and the possession advance or move forward the crime.
23 The mere presence of a firearm is not enough. Possession in
24 furtherance requires that the possession be incident to an
25 essential part of the crime. The firearm must have played some

G9LVROD3

1 part in furthering the crime in order for this element to be
2 satisfied.

3 As I explained earlier, the legal concept of
4 possession differs from the everyday usage of this term.
5 Actual possession is what most people think of as possession,
6 that is, having physical custody or control of an object, as in
7 I possess this pen. If you find the defendant had the firearm
8 on his person therefore, you may find that he had possession of
9 it. However, a person need not have actual physical
10 possession, that is, physical custody of an object, in order to
11 be in legal possession of it. If an individual has the ability
12 to exercise substantial control over the object, even if he
13 does not have the object in his physical custody at a given
14 moment, and that person has the intent to exercise such
15 control, then he is in legal possession of that article and
16 this is called constructive possession.

17 More than one person can have control over the same
18 firearm. The law recognizes that possession may be sole or
19 joint. If one person alone has actual or constructive
20 possession of a thing, possession is sole. If more than one
21 person has possession of it as I have defined "possession,"
22 then possession is joint. Control over an object may be
23 demonstrated by the existence of a working relationship between
24 one person having the power or ability to control the item and
25 another person who has actual physical custody. The person

G9LVROD3

1 having control possesses the firearm because he has the
2 effective working relationship with the people who have actual
3 physical custody of the firearm and because he can direct the
4 movement or transfer or disposition of the firearm.

5 In addition, an individual may have possession of an
6 item that is not found on his person because that individual
7 has a relationship to the location where the item is
8 maintained. In this matter, for example, a businessperson may
9 legally possess things that are scattered throughout a number
10 of stores or offices or installations around the country. If
11 an individual has the ability to exercise substantial control
12 over an object, he does not have it in his physical custody and
13 the intent to exercise such control, then he is in possession
14 of the article. Proof of ownership is not required to
15 establish possession.

16 "To possess a firearm in furtherance of a narcotics
17 crime" means that the firearm helped promote, accomplish,
18 advance, or achieve the goal or objective of the underlying
19 offense. The mere presence of the firearm at the scene of the
20 drug trafficking is not enough. The firearm must have had some
21 nexus, that is, some purpose or effect with respect to
22 underlying drug offenses such as when the firearm is readily
23 accessible to protect drugs, drug proceeds, or the drug dealer
24 himself.

25 In deciding whether there is such a nexus, you may

G9LVROD3

1 consider the accessibility of the firearm, whether the firearm
2 was loaded, the type of weapon, whether or not the defendant
3 legally possessed it, the type of drug activity conducted,
4 whether the firearm was stolen, the time and circumstances
5 under which the firearm was found, and the proximity of the
6 firearm to the drugs or drug profits. This list of factors is
7 not exclusive, but it helps to distinguish between possession
8 in furtherance of crime from innocent possession such as a drug
9 dealer who possesses a wall-mounted antique or an unloaded
10 rifle that is locked in the cupboard and used for target
11 shooting or in hunting game.

12 The final element the government has to prove in the
13 gun charges beyond a reasonable doubt alleged in Count Two is
14 that the defendant knew that he was using, carrying, or
15 possessing a firearm, and that he acted knowingly in doing so.

16 So satisfy this element, you must find the defendant
17 had knowledge that he was carrying or using the firearm as that
18 term is generally used. An act is done knowingly if it's done
19 purposefully and voluntarily as opposed to mistakenly or
20 accidentally. You will recall that I instructed you earlier
21 that to determine someone acted knowingly requires you to make
22 a finding as to that person's state of mind.

23 In order for the government to satisfy this element,
24 it must prove that the defendant knew what he was doing. For
25 example, that he knew that he was possessing or carrying a

G9LVROD3

1 firearm in the commission of a drug trafficking crime. It is
2 not necessary, however, for the government to prove that the
3 defendant knew that he is violating any particular law.

4 In addition to all the elements for Counts One and
5 Two, as I've just described to you, you must decide separately
6 and with respect to each of the counts whether any act in
7 furtherance of the crime occurred within the Southern District
8 of New York. The Southern District of New York includes, among
9 other places, Manhattan, the Bronx.

10 In this regard, the government need not prove that the
11 crime was committed in this district, but that the defendant
12 himself was present here. It is sufficient to satisfy this
13 element if any act in furtherance of the crime occurred in the
14 Southern District.

15 I should note that on this issue, and this issue
16 alone, the government need not prove venue beyond a reasonable
17 doubt, but only by a mere preponderance of the evidence. The
18 preponderance of the evidence means that the government must
19 prove that it is more likely than not that any act in
20 furtherance of the charge you are considering occurred in the
21 Southern District. Thus, with respect to Counts One and Two,
22 the government has satisfied its venue obligations if you
23 conclude that it is more likely than not that any act in
24 furtherance of the crime charged occurred within this district.
25 If you find that the government has failed to prove this venue

G9LVROD3

1 requirement, then you must acquit the defendant of this charge.

2 Now the concluding instructions.

3 You are about to go into the jury room and begin your
4 deliberations. Your function now is to weigh the evidence in
5 this case and determine whether the government has proven
6 beyond a reasonable doubt that Mr. Rodriguez is guilty of the
7 offenses charged in Counts One and Two of the indictment.
8 Remember, you must answer each count separately. You must base
9 your verdict solely on the evidence and these instructions as
10 to the law. You are obliged under your oath as jurors to
11 follow the law as I have instructed you, whether you agree or
12 disagree with the particular law in question.

13 The verdict must represent the considered judgment of
14 each juror. In order to return a verdict, it is necessary that
15 each juror agree to it. Your verdict has to be unanimous. If
16 you are divided, do not report how the vote stands. If you
17 have reached a verdict, do not report what it is until you are
18 asked for your decision in open court.

19 When you retire to the jury room, you must have a
20 foreperson. That person will preside over deliberations and
21 speak for you here in the court. Other than those functions,
22 the foreperson has no greater or lesser authority than any
23 other juror.

24 It is my custom to select Juror No. 1 in every case to
25 be foreperson of the jury. Accordingly, I am now selecting

G9LVROD3

1 Juror No. 1, Ms. Jackson, as your foreperson.

2 It is your duty as jurors to consult with one another
3 and deliberate with a view towards reaching an agreement. Each
4 of you must decide the case for himself or herself, but you do
5 so only after impartial discussion and consideration of all the
6 evidence in this case with your fellow jurors. In the course
7 of your deliberations, do not hesitate to reexamine your own
8 views and change an opinion if you become convinced your
9 opinion is erroneous. But do not surrender your honest
10 convictions as to the weight or effect of evidence solely
11 because of the opinions of your fellow jurors.

12 Because it is essential that every juror consider all
13 the facts and arguments before reaching a decision, all of you
14 must be present in order to deliberate. If any juror takes a
15 break during the course of your deliberations, all of you must
16 stop discussing the case until the jurors who are taking a
17 break return.

18 Similarly, if any juror arrives late in the morning,
19 you may not commence your deliberations until all 12 of you are
20 present. For your deliberations, you will be provided with
21 copies of this instruction I am currently giving you, copies of
22 the indictment. There will be one verdict sheet. I'm going to
23 send in the documentary evidence that was received in
24 evidence -- the documentary exhibits that were received in
25 evidence.

G9LVROD3

1 If you want any of the testimony read, you can also
2 request that. Please remember that it is not always easy to
3 locate what you might want, so try to be as specific as you
4 possibly can in requesting testimony and portions of testimony.

5 If you want further explanation of the law as I have
6 explained it to you, you may also request that from the Court.
7 If there is any doubt or question about the meaning of any part
8 of this charge, you may ask for a clarification or further
9 explanation.

10 Your requests or any communication you wish to make
11 with the Court should be made in writing, signed by your
12 foreperson, and given to one of the court security officers.
13 Bear in mind that you are never to reveal to any person -- not
14 even to me -- how you, the jury, stand numerically or otherwise
15 on the question before you until after you have reached a
16 unanimous verdict.

17 As I say, again, your decisions must be unanimous; but
18 you are not bound to surrender your honest beliefs concerning
19 the effect or weight of the evidence for the mere purpose of
20 returning a verdict or solely because the opinion of other
21 jurors. Discuss and weigh your respective opinions
22 dispassionately, without regard to sympathy, prejudice, or
23 favor for either party, and adopt a conclusion that in your
24 good conscience appears to be in accordance with the truth.

25 Some of you have taken notes during the trial. As I

G9LVROD3

1 told you at the beginning of the trial, I permit this because
2 some people find that taking notes helps them focus on the
3 testimony being given. But your notes are for your private use
4 only as a way to help you recall the testimony as you begin
5 your deliberations. A juror's notes are not entitled to any
6 greater weight than the recollection of the juror who did not
7 take notes.

8 Again, each of you must make your own decision about
9 the proper outcome of this case based on your consideration of
10 the evidence and your discussion with your fellow jurors. No
11 juror should surrender his or her conscientious beliefs solely
12 for the purpose of reaching a unanimous verdict.

13 Your verdict has to be based solely upon the evidence
14 introduced at trial or the lack of evidence. It is improper
15 for you to consider any personal feelings you may have about
16 the defendant's race, religion, national origin, gender, sexual
17 orientation, or age. The parties in this case are entitled to
18 a trial free from prejudice, and our judicial system cannot
19 work unless you reach your verdict in fair and impartial
20 consideration with the evidence before you.

21 Your function now is to weigh the evidence in this
22 case and to determine whether the government has or has not
23 established Mr. Rodriguez's guilt beyond a reasonable doubt
24 with respect to each count of the indictment. You must base
25 your verdict solely on the evidence and these instructions as

G9LVROD3

1 to the law. You are obliged by your oath as jurors to follow
2 the law as I instruct you, regardless of whether you agree or
3 disagree with the particular law in question. Remember at all
4 times you are not partisans, you are judges, judges of the
5 facts. Your sole interest is to seek the truth from the
6 evidence in this case.

7 I will now consult with the lawyers at the side to see
8 if there's any supplemental instructions they want me to
9 consider.

10 (At the side bar)

11 THE COURT: Before we start, I want to put on the
12 record that we had a charging conference yesterday. The basis
13 for the charging conference was the proposed charges the
14 parties had submitted that I circulated to the parties last
15 evening, represents a substantial rendition which is faithful
16 to what the proposed charges were submitted on consent of both
17 parties.

18 Do you have any objections?

19 MS. HOULE: No, your Honor.

20 MR. HANDWERKER: No, your Honor.

21 THE COURT: Thank you very much.

22 (In open court)

23 THE COURT: Only 12 can deliberate, so at this time
24 I'm going to excuse the alternate jurors, Ms. Eschen and
25 Mr. Jacobs. So you're excused now with the thanks of the

G9LVROD3

1 Court. I appreciate your time with us.

2 If you took notes, please leave your notes in the jury
3 room and don't discuss the case. We have your contact
4 information; we'll let you know what the jury verdict is when
5 they return the verdict.

6 Thank you very much.

7 (Alternates excused)

8 THE COURT: Marlon, would you swear in the court
9 officer.

10 (Marshal sworn)

11 THE COURT: We're going to have lunch at what time,
12 Marlon?

13 THE DEPUTY CLERK: In about ten minutes, Judge.

14 THE COURT: We'll be serving lunch in ten minutes.
15 You can certainly have lunch.

16 Your schedule for deliberations will be strictly up to
17 you. All we ask is when you break for the day, that you send
18 us a note indicating what time you want to break.

19 Is there anything else, Marlon?

20 THE DEPUTY CLERK: No, sir.

21 THE COURT: Okay.

22 So have your lunch, begin your deliberations.

23 We'll send in the indictment, a couple copies of the
24 indictment, the jury charges, the jury verdict sheet. We'll
25 assemble the documentary evidence that you can bring in the

G9LVROD3

1 jury room.

2 If there's anything else you need, just send us a
3 note. Let us know towards the end of the day what your
4 schedule is for deliberations.

5 Tomorrow morning, if you don't reach a verdict today,
6 tomorrow morning we'll have the same -- follow the same plan:
7 Coffee and doughnuts will be available at 9 o'clock in the
8 morning. You can begin your deliberations when all 12 of you
9 arrive. Okay?

10 Thank you very much.

11 (At 12:39 p.m., the jury retired to deliberate)

12 THE COURT: The parties should work together to
13 assemble the documentary evidence, the exhibits that were
14 received in evidence.

15 MS. ESTES: Yes, your Honor.

16 THE COURT: One notebook.

17 MS. ESTES: Yes, your Honor. We have a notebook.

18 THE COURT: Make sure Mr. Handwerker agrees there's
19 nothing in those books that is not received in evidence that's
20 going into the jury room.

21 MS. ESTES: Yes, your Honor. We will confer with
22 Mr. Handwerker.

23 Your Honor, would you like the physical exhibits to go
24 back as well or just the notebook?

25 THE COURT: No, not the physical exhibits.

G9LVROD3

1 MS. ESTES: Thank you, your Honor.

2 THE COURT: If they want the physical exhibits, they
3 can ask for them.

4 THE DEPUTY CLERK: We are sending into the jury room
5 one copy of the verdict form, 12 copies of the indictment, and
6 12 copies of the jury charge.

7 MS. ESTES: Thank you.

8 THE DEPUTY CLERK: You're welcome.

9 MS. HOULE: Your Honor, would you like us to put on
10 the record that the parties have agreed on the document exhibit
11 binder?

12 THE COURT: Yes.

13 MS. HOULE: We've agreed.

14 MR. HANDWERKER: We have.

15 THE COURT: Congratulations.

16 MS. HOULE: Thank you.

17 THE COURT: We're going to give the agreed-upon
18 exhibits to the court officer and the court officer will bring
19 it to the jury room.

20 MS. HOULE: Thank you.

21 (Recess pending verdict)

22 (At 1:31 p.m., a note was received from the jury)

23 THE COURT: We have a note from the jury.

24 Message: Testimony of Antoinette Guzman. It's signed
25 by -- print name and juror number, Judith Woods, No. 5. This

G9LVROD3

1 note came in at 1:31.

2 I'm going to -- Marlon, give that to the parties.

3 You've seen it already?

4 MS. ESTES: Yes, your Honor.

5 MR. HANDWERKER: Yes.

6 THE COURT: Mr. Handwerker, you want to see it again?

7 MR. HANDWERKER: No, thank you.

8 THE COURT: Now, Ms. Guzman's testimony starts at --
9 Ms. Houle examines him starting at page 199, and it goes to
10 page 207. Mr. Handwerker starts at 207 and goes to 210.

11 What I would propose to do, rather than reading it to
12 them, is just give them pages 199 to 210.

13 MS. ESTES: That's fine with the government, your
14 Honor.

15 MR. HANDWERKER: Judge, if it's not an inconvenience,
16 we would prefer that the jury come out.

17 THE COURT: Okay. Marlon.

18 Do you want the court reporter to read it back? The
19 court reporter will read back the testimony.

20 MR. HANDWERKER: That's fine.

21 MS. ESTES: Your Honor, may we confirm that if there
22 were objections that were sustained, those questions won't be
23 read?

24 THE COURT: Where are the objections?

25 MS. ESTES: One moment.

G9LVROD3

1 They are on page 210, line 21 -- or line 18.

2 (Jury present)

3 THE COURT: We have your note asking for Ms. Guzman's
4 testimony. Ms. Guzman's testimony starts at page 199, at line
5 5, that's the examination by Ms. Houle. Mr. Handwerker's
6 examination starts at page 207 and goes till page 210 at line
7 17.

8 I'll ask the court reporter, Martha Martin, to take
9 the witness stand and read it back.

10 (Record read)

11 THE COURT: Exhibit 800, which is in the jury room,
12 was also introduced into evidence during Ms. Guzman's
13 testimony. That's the agreement between Mr. Rodriguez,
14 Mr. Handwerker, and the U.S. Attorney's Office over the context
15 of the discussion we were having. Okay?

16 You can resume your deliberations.

17 Thank you very much.

18 (Jury resumed deliberations; time noted: 2:06 p.m.)

19 THE COURT: Everybody stay close to your phones.

20 MS. ESTES: We will, your Honor.

21 (Recess pending verdict)

22 (Jury present)

23 THE COURT: Have you reached a verdict?

24 THE FOREPERSON: Yes.

25 THE DEPUTY CLERK: In the matter of *United States of*

G9LVROD3

1 *America v. Michael Earl Rodriguez*, docket number 15 CR 756.

2 You can open it up.

3 Count One.

4 No. 1. As to Count One, how do you find the
5 defendant, guilty or not guilty?

6 THE FOREPERSON: Guilty.

7 THE DEPUTY CLERK: 1A. Was the controlled substance
8 involved in the conspiracy in Count One marijuana?

9 THE FOREPERSON: Yes.

10 THE DEPUTY CLERK: Count Two.

11 As to Count Two, how do you find the defendant, guilty
12 or not guilty?

13 THE FOREPERSON: Not guilty.

14 THE COURT: Do you want the jury polled?

15 MS. ESTES: No, your Honor.

16 MR. HANDWERKER: No, Judge.

17 THE COURT: All right.

18 Well, thank you very much. I never comment on the
19 jury's verdict. As I told you in my instructions, the jury
20 verdict, that's your business. But I appreciate your
21 promptness, your attention to the facts here. You were paying
22 close attention to the instructions and you're discharged now
23 from jury service. Each of you will get a letter. I think
24 you're exempt now from jury service for how long, Marlon?

25 THE DEPUTY CLERK: Four years.

G9LVROD3

1 THE COURT: Four years.

2 So thank you again.

3 The lawyers may want to talk to you. It's up to you.

4 If you wish to talk to the lawyers, you can stay in the jury
5 room. If you don't want to talk to them, you don't have to;
6 but if you want to, you're certainly welcome to.

7 So thank you again. I appreciate your service. It's
8 been very valuable.

9 (Jury discharged)

10 THE COURT: Do you want to make motions,
11 Mr. Handwerker?

12 MR. HANDWERKER: I'll waive motions, Judge. I'll
13 reserve.

14 THE COURT: What are the guidelines on Count One?

15 MS. ESTES: Your Honor, we don't have a current
16 calculation at this time.

17 THE COURT: Give me an approximation.

18 MS. ESTES: I believe the high end would be over 16
19 months.

20 THE COURT: Over?

21 MS. ESTES: Over 16 months.

22 THE COURT: 16, one six?

23 MS. ESTES: 16, one six.

24 THE COURT: Six zero?

25 MS. ESTES: One six.

G9LVROD3

1 MR. HANDWERKER: No, one six.

2 THE COURT: How long has Mr. Rodriguez been detained?

3 MS. ESTES: Thirteen months.

4 MR. HANDWERKER: Thirteen months.

5 THE COURT: And the high end is 16?

6 MS. ESTES: It would be over 16.

7 I believe the plea offer, which contained acceptance
8 points and which is before we believe we proved greater weight,
9 the high end of the guidelines with that offer was 16 months.

10 MR. HANDWERKER: Judge, if I may, the range there was
11 10 to 16 months, and he's got 13 months in.

12 THE COURT: We ought to set a date for sentencing as
13 quickly as possible.

14 MS. ESTES: That's fine, your Honor.

15 THE COURT: Marlon, how quickly can we do this?

16 THE DEPUTY CLERK: If we're asking for a PSR to be
17 done, in about six weeks.

18 THE COURT: Mr. Handwerker?

19 MR. HANDWERKER: Judge, I would ask that the defendant
20 be released on bond at this time.

21 THE COURT: No, not after a conviction. I'm willing
22 to expedite the PSR as much as I possibly can.

23 MR. HANDWERKER: Can I have a late October date or
24 early November?

25 THE DEPUTY CLERK: Monday, October 31st.

G9LVROD3

1 MR. HANDWERKER: October 31st?

2 THE COURT: Yes.

3 MR. HANDWERKER: That's fine.

4 THE DEPUTY CLERK: 4:30 p.m. on the 31st.

5 THE COURT: Now, probation is going to expedite this
6 report so it's ready by October 31st. Everybody has to
7 cooperate. I know it's in your interest to cooperate,
8 Mr. Handwerker. It would be in the government's interest to
9 cooperate as well. So everybody can, if they do what they are
10 supposed to, respond properly to probation. We'll get the
11 report and we'll do the sentencing on October 31st at what
12 time?

13 THE DEPUTY CLERK: 4:30 p.m., your Honor.

14 THE COURT: You're waiving any motions,
15 Mr. Handwerker?

16 MR. HANDWERKER: Yes, I am, Judge.

17 THE COURT: Anything else to do?

18 MS. ESTES: No. Thank you, your Honor.

19 THE COURT: Thank you very much.

20 MR. HANDWERKER: Sincere thanks, Judge, you and your
21 staff.

22 THE COURT: Okay. Well, my staff is very good. They
23 try to please.

24 MR. HANDWERKER: They are.

25 THE COURT: Thank you. (Trial concluded)